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THE SMṚTICHANDRIKÂ

VYAVAHÂRA KÂṆḌA—PART I

(From the 'Nature of **Vyavahâra**' to 'Property of Children &c.'

(**Forty Three Topics.**)

AN ENGLISH TRANSLATION WITH NOTES &c.

BY

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NOTE

The Author of the **Smṛtichandrikâ** divided the treatise in three groups or *Kâṇḍas* viz.; the *Âchâra* including the *Ânhika*, the *Vyavahâra*, and the *S'râddha*. The first of these viz., the *Âchâra* has been translated and issued as Vol. XXVIII of this series.

The Author has split up the *Vyavahâra* into two parts or *Parichhedas*. The present volume contains the translation of the First Part which deals with the Procedural side of the *Vyavahâra* and the General Rules.

The second part gives the provisions regarding substantive rights commencing with the 'Law of Debts' and ending with the law of 'Gambling and Betting on Animals', and the 'Miscellaneous Chapter'—*Prakîrṇaka*. The next two volumes will contain the translation of the remaining portion of the Second Part, and also a Preface for the entire work.

The Third Book which deals with the *S'râddhas* will not be translated in English, but a Marâthi or Hindi translation may be issued as circumstances may permit.

Law College, Poona
26th January 1948

J. R. GHARPURE.

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SMṚTI-CHANDRIKÂ

COMPOSED BY

DEVAṆṆA BHAṬṬA

Book II—Vyavahâra-Kâṇḍam

Bow to the prosperous Gaṇeśa. Bow to the prosperous Sarasvatî. Bow to the revered Gurus.

There, in the **Vyavahârakâṇḍa, First section—Parichchhedaḥ.**

To the Lord of Sarasvatî, I offer salutation ; to the Lord of the Goddess of wealth; to the Lord of Umâ ; to the Lord of the luminaries, to the Lord of the Gaṇas, to the sages headed by Bṛhaspati. At each step committing errors in spite of the existence of Pradîpa and the like, for the use of the sight of the seers, this Moonlight[1] is being expounded.

Now the **Vyavahârakâṇḍa** is begun.

There, first the nature of a Vyavahâra is being discussed. There **Bṛhaspati** : "Men conducting entirely according to (the dictates of) Dharma in the past were free from (the guilt of doing) harm ; for those overpowered by (the passions of) covetousness and hatred, has been declared a legal proceeding." The meaning of this has been expounded by **Nârada**[2] : "When men entirely conducted themselves according to (the dictates of) Dharma, and were truthful, at that time there was no proceeding at law, no hatred, nor even jealousy. It is when the Dharma vanishes from among men, that a legal proceeding has been declared". The meaning is that among men a proceeding relating to the payment of debts and the like has been declared to be (a proceeding) at law. To that effect also **Kâtyâyana**[3] : "A judicial proceeding administering

1 प्रदीप—चंद्रिका. Here there is a play upon the two words धर्मप्रदीप and स्मृतिचंद्रिका. The author says, although there are lights, and even flashlights (प्रदीप) on this subject, still something was felt to be wanting and therefore the moonlight (चंद्रिका).

2 Intr. Verse, I. 2.

3 This definition of Kâtyâyana centres the idea of *Vyavahâra* in a proceeding at law. For a detailed analysis of this term *Vyavahâra* see Note 1 on p. 632 Coll. Vol. II. where its literal meaning and several aspects have been set out. अपरार्क brings this out in his comment on this text of कात्यायन thus :

धर्ममाख्यातीति धर्माख्यः। न्यायविस्तारो न्यायप्रपञ्चः। तस्मिन्विच्छिन्ने प्रतिवादिना विलोपिते ततश्च लिखितसाक्ष्यादिप्रमाणोपन्यासरूपप्रयत्नसाध्ये सति यो वादिनोर्वादः स व्यवहार इति।

law, wherein upon an infringement, the point is established with effort, and thus which has the establishment of the point at issue as its basis, is called **Vyavahâra.**" This is the meaning: The thing called Dharma which is accomplished by truth-telling, non-violence, constancy and the like efforts, and which when infringed by causes such as avarice, rashness and the like, where e. g. in (a case of) recovery of a debt, for the purpose of securing one's money, as also in cases of a contract and the like, with a view to avoid other Dharmas, where the administration of law is made, there the dispute among men which has for its basis the point to be established, is called *Vyavahâra.*" Hence also **Hârîta**: "Wherein one's property is obtained and similarly another's Dharma is avoided according to law, that is called *Vyavahâra.*" The meaning is, the dispute where (the right to) property is denied, and in the case of heretics etc., disputes regarding the infringement of one's own Dharma, also is *Vyavahâra.* It must not be supposed that a trial like that of theft, violence etc., would not be a *Vyavahâra*, since says **Yâjñavalkya**[1]: "If one injured by others in a way which is a violation of the (laws of) Smṛtis and usage, informs the king, that indeed becomes a (fit) subject for a judicial proceeding." **Kâtyâyana** also: "If a teacher strike in anger a pupil without the birch, and extreme pain is caused, a complaint may lie by the father on behalf of the pupil." **Bṛhaspati** also: "When the master pays wages to the workmen employed for doing a work, and if the workmen do not perform, there a dispute starts. Or, where any one does violence, or does not profer a thing which has to be given, these two indeed, are occasions for a dispute; of the two the details are manifold." **Uśanâ** also: "Having in mind a certain object, when one lays an information before the king, that has been declared as the cause for a trial of the eighteen kinds of disputes." Thus the meaning in substance of the texts of Yâjñavalkya and others should be understood to be, that a dispute in regard to any one of the eighteen varieties of topics is a judicial proceeding (*Vyavahâra*). Hence also **Nârada**[2]: "Recovery of debts, Bailments, a Joint undertaking, Resumption of what was given, Non-service after acceptance of duties, Non-performance of work for wages, similarly also Sale without ownership, Non-delivery after sale, Rescission after purchase, Non-performance of a contract, a Dispute Relating to land likewise, Relation between Men and women, Share of a Heritage, Heinous offences, Abuse, Assault has similarly been

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1 Ch. II. 5. 2 Intr. 18–19.

stated, Gambling and the Miscellaneous, thus has been stated to be of eighteen parts." The meaning is that a proceeding which has for its subject the Recovery of Debt or any of the eighteen topics is a judicial proceeding (*Vyavahâra*). Nor should it be said that by reason of the other topics such as a Deposit and the like having been stated, the expression eighteen would be contradicted; since the **same Author**[1] says: "The further divisions of these also amount to a hundred and eight; by reason of the multifariousness of human transactions it is declared to have a hundred varieties". **Kâtyâyana** also: "By reason of the eighteen titles with different characteristics, (these) are of eight thousand". 'With different characteristics' i. e. having different objectives to be established. By this is stated in substance that judicial proceedings also are of eight thousand different varieties. The two expressions 'One hundred and eight,' 'Eight thousand,' are intended merely to demonstrate the numerousness; and thus there is no contradiction.

Thus in the **Smṛtichandrikâ**, the consideration of the **Characteristics of Vyavahâra**.

Now the **Description of the Eighteen Titles–Aṣhṭâdaśapada-Nirûpaṇam.**

There the **Characteristics of Recovery of Debts.**

1 The varieties, morever, some have been pointed by **Nârada**[2]: "Which debt must be paid, and which may not be paid, by whom, where, and in what way to be paid, and the rules of advancing and of recovering (loans) are said to make up the (title) Recovery of Debts." For purposes other than gambling and such other censured purposes, the debts incurred by the father or the like must be paid. For the maintenance of the family or for a similar necessary purpose a debt incurred by the father or the like must be paid. By the sons, son's sons and the like (who are) under an obligation, after the period of minority, by the process of doubling &c. should be paid, all that. Likewise, acceptance of a pledge and the like, procedure for the advance of money, as also the process of the recovery of the debts such as by stages; a title of law in which these are stated, that title called 'The Recovery of Debts'; this is the meaning.

2 Of the second[3] title also, the **Same Author**[4] states the characteristics and the kind. "Where a man entrusts any property of his own to another

1 Intr. 20. 2 Ch. I 1. 3 *i. e.* उपनिधि, Bailment. 4 Ch. II. 1.

in confidence and without[1] suspicion, it is called by the learned a deposit—a (distinct) title of law. That, where while being under a seal, property is deposited without being counted or known, should be known as an *Upanidhi*; whereas it is known as *Nikṣhepa* when (it is) counted". The meaning is that the difference between the *Nikṣhepa* and the *Upanidhi* is connected with their being counted and not counted.

Of the expression 'Not Known' the meaning has been expounded by **Bṛhaspati**: "That which has not been described, is covered, is not measured, is not exhibited, and which is marked by a seal and has been made over, (that) has been declared as *Aupanidhika* (of an *Upanidhi*)". 'Has been made over' *i. e.* into another's hand. So

Page 3* also **Yâjñavalkya**[2]: "Property which being placed in a box is delivered into the hands of another without being described, is called an *Upanidhi*—a deposit; it should be returned in the same condition". 'Box' *i. e.* some pot for holding the deposit, such as casket or the like. Hence also **Nârada**[3]: "Where money covered in another object, and which without being laid open is placed in another's house, that bailment is declared as an *Upanidhi*". Where it is deposited not characterised as above, that is called a deposit; so says **Bṛhaspati**: "Where out of fear of the King or the robbers, and also by way of a fraud against the *dâyâdas*, money is deposited at another's house, that is declared a *Nyâsa* deposit".

Kâtyâyana[4], however, mentions an exception to this: "Money made over for purchases, or deposited by one in a journey, or as a charge, or an *Anvâhita*[5] or *Yâchita*[6], or money advanced as a money-lender, has been declared to be an *Upanidhi*". 'Purchase', *i. e.* as a means for making a purchase. 'Deposited by one in a journey', here the expression 'one in a journey', is indicative, by implication of 'one about to set out on a journey'; 'a charge', *i. e.* a pledge; *Anvâhitam*, made over for giving to another; *Yâchitam*, another's property such as ornaments etc. brought over; 'advanced as a money-lender', *i. e.* made over to another for agricultural operations or the like.

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1 आविशंकितः 2 Ch. II. 65. 3 Ch. *II* 5.

4 See also Yâjñavalkya II. 67 (2) p. 870–71.

5 अन्वाहित—is a deposit made by the bailee to another to be handed over to the original depositer. (See *Mitâkṣharâ* p. 840 ll. 27–30).

6 याचित—Clothes, ornaments &c. borrowed on the occasion of a marriage or the like festivities and agreed to be returned Cf. *Commodatum* of the Roman Law.

The Deposit thus described with its kinds, is again of two varieties; so says **Nârada**[1]: "That, moreover, has been declared to be of two varieties; having witnesses, and another likewise; the return of this is in a similar manner; there shall be proof in case of a dispute". 'Proof' *i. e.* by ordeal.

3 Similarly, the Third title also: the characteristics and varieties also have been pointed out by the **Same Author**[2]: "Where tradesmen or the like others combine together and enter upon a transaction, that is known as a trading by partnership—a title of law". 'Tradesmen, (in) a mercantile transaction, officiating priests,(at) a sacrifice, agriculturists, (for) cultivation, gold-smiths and the like, (in) a work of art, dancers etc. (for) dancing or the like, thieves etc. (for) thieving or the like, where (these) combine together and carry on, that trade etc., being carried on by a combination—by reason of its derivation, viz. that with which after combining together, they start up *i. e.* work together—it is the title of law called the trading by partnership; this is the meaning. By the expression 'Tradesmen or the like', itself, its varieties have been indicated.

4 Likewise, of the Fourth title also, the characteristics and kinds have been indicated by the **Same Author**[3]: "Where one wishes to take back a thing which he has not properly bestowed, it is called a Resumption of gifts, a title of law". A transfer in which money which has (already) been paid is to be taken back on account of the thing having been returned owing to a fault of the artisan—a transaction in which occurs the non-delivery of a thing given—by this derivation, it is Non-delivery of what is given—a title of law—thus is its literal meaning. Also, without any fault of the artisan or the like, where there is non-resumption *i. e.* non-rescision of a given thing—by this derivation non-rescision of what is given—thus is its sense significance.

Having thus stated its twofold division according to the literal and real meanings, the **Author**[4] states its four-fold division by regard to things which may be given and may not be given, as also by regard to their being the objects or the agents of the act: "What may be given, and what may not be given, valid gifts, and invalid gifts; thus the law of gifts is declared (to be) fourfold in judicial affairs". 'What may be given', the thing which can bring about the completion of an unprohibited

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1. Ch. II. 6.

donation ; its opposite is what may not be given : 'A valid gift', *i. e.*, when a gift has been validly made, which cannot be taken away ; while 'an invalid gift' is that which can be taken away. The meaning is that thus by these four (varieties of) things which may be given and which may not be given, and valid and invalid gifts, the mode of gifts, *i. e.* the process of gifts should be known to be of four kinds in judicial proceedings.

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5 Similarly, of the Next title also, the characteristics and kinds have been stated :[1] "If one who has undertaken service, does not render it
10 it is called a Breach of contract of service, a title of law." The meaning is, that the act of undertaking to perform the commands of the pupil etc., by a pupil or the like who is desirous of rendering service, and non-performance, is the title of law known as Non-performance of service after undertaking it. By the use of the common term 'he,' the five-fold
15 variety of this title is evident, as it is in connection with the five kinds of servants viz. a pupil, an apprentice, a servant paid by wages, a worker under a contract, and a slave, and so a separate classification has not been pointed out by him. By **Bṛhaspati**, however, a multifarious classification has been pointed out: "Of many varieties has been declared, and according
20 to the difference of caste, duties, acquisition of knowledge and the payment for the work, of four kinds, in each of these, the difference in proof has been declared." The Vedic knowledge is the cause for a pupil to do service, artistic knowledge for an apprentice, and work and wages for a hired servant.

6 Of the Next title, the characteristics and kinds have been stated
25 by **Nârada**[2] : "A series of rules stated in regard to the payment and non-payment of wages of paid servants, that is called Non-payment of wages, a title of law." 'Of paid servants,' i. e. of those doing work for wages; 'of remuneration' i. e. of the wages, series of rules regarding payment and non-payment i. e. for such a one should be paid,
30 for such a one should not be paid, even if paid and to be taken back from a particular kind, at times a double to be taken back, a title of law in which such and the like rules have been stated, that by reason of its derivation, viz., of wages *i. e.* of the remuneration, non-payment (*i. e.* non-discharge or not performing in accordance with the agreement) is the Non-
35 payment of wages ; this is the meaning. By this also by reason of a variety of points, such as what should be given and the like, this title has been stated to be of a multifarious character.

1 Ch. V. 1. 2 VI. 1.

7 In the same way **he**[1] states about the Next title: "When a thing kept as a deposit, or the property of a stranger lost (by him), and found (by another), or stolen articles are sold behind his back—it should be known as a Sale by other than the owner." "Behind the back" *i. e.* of the owner. So also **Vyâsa**: "When a thing which was borrowed (as a *Commodatum*), a deposit received for being made over to the original depositor, a thing accepted as a deposit, or property which has been stolen from another, is sold in the absence of the owner—that should be known as a Sale without ownership." 'In the absence of the owner,' *i. e.*, when the owner is not near at hand.

8 In this manner should be observed the characteristics and divisions of the Next title also. To that effect **Nârada**[2]: "Where a commodity has been sold for a price and is not delivered to the purchaser, it is called Non-delivery of a sold article, a title of law." Of this, moreover, are (different) kinds by regard to the commodity for sale; so the **Author**[3] states the divisions: "In this world property is of two kinds, immovable and movable likewise; in the rules regarding sale and purchase, all that is called a vendible property. The rule regarding delivery and non-delivery of that, however, has been declared to be of six varieties by the learned (thus): (what is sold) by tale, by weight, by measure, according to work, according to its beauty, and according to its splendour." 'By tale,' such as the betel-nut or the like; 'by weight,' such as asafœtida or the like; 'by measure,' such as by *Kuḍava* etc. rice and the like; 'according to work,' *i. e.* by carrying, milking etc., the horse, a buffalo or the like; 'according to beauty,' such as a prostitute etc.; 'according to splendour,' *i. e.* lustre such as a jewel etc.

9 Thereafter, the **Author**[4] states the characteristics of the Next title "Where a purchaser, after having purchased an article for a price, does not much approve of it, that is termed 'Rescision of Purchase,' a title of law". 'Does not much approve' *i. e.* does not much like it after deliberation.

PAGE 5* Likewise, the **Author**[5] states the exposition of the Next title: "The (general) rules settled among *Pâkhaṇḍis*, *Naigamas* and like others are called a compact (*Samaya*); Non-transgression of such a compact; that is declared a title of law." *Pâṣhaṇḍâs*, such as the *Kṣhapaṇakas*, the *Naigamas*; caravans

1 Ch. VII. 1. 2 Ch. VIII. 1. 3 Ch. VIII. 2-3.
4 Ch. IX. 1 5 Ch. X. 1.

or traders. By the use of the word *Âdi*, 'and the like others,' are included, the associations of Brâhmaṇas learned in the three lores, corporations, trade-guilds, peoples' associations, of villagers, towns etc., of these the position is to be determined from their settled rules *i. e.* compact ; of that the non-observation—*i. e.* non-transgression, that is the non-transgression of a compact. The non-performance of that, by the inverse (method of) characterisation, like the meaning of the word *Darśa* (दर्श), the non-transgression of a compact—a title of law ; this is the meaning. Breach of contract is the other name of this title, is well known, and so has not been stated.

The Next title also, **he**[1] expounds: "Where the determination of the boundary of a water embankment or a mound disturbed by being broken into or unbroken is made, and the rights over fields are in dispute, that title is called the Land dispute." 'Water embankment,' *i. e.* a dam for a waterflow ; 'a mound,' a region determined by petty embankments, or a field merely. 'Boundary,' *i. e.* the terminal point of a field etc. 'Broken into,' *i. e.* broken through by a furrow or the like. 'Unbroken,' *i. e.* the entire place ; a dispute in which the determination of the titles of these in regard to the fields takes place, that dispute is a Land dispute ; this is the meaning. That, moreover, is of six varieties; so says **Kâtyâyana**: "Excess or deficiency as to a part, existence or absolute non-existence (of the right itself), possession without previous possession (by any other), and a boundary, are the six causes that lead to a dispute regarding land". The meaning of this is being stated by a detailed discussion. In regard to a certain portion of land admitted (by all parties) where the dispute is whether there is more land than that or not, that is (a dispute) in regard to excess ; for an assertion that a particular land is not yours, the answer that so much land is mine, is 'in regard to less' ; where, to an assertion that 'in this land there is a portion of mine,' the reply is 'no,' it is (a dispute) 'in regard to the existence' ; where, to an assertion 'here you have no share,' the reply is 'yes, there is,' it is (a dispute) in regard to non-existence ; where, to an assertion 'my land is in your possession when it was never before in your possession,' the answer is 'there was certainly my possession before the possession of any other,' it is a dispute in regard to 'possession without previous possession,' ; where, to an assertion, 'this boundary is of my land,' the reply is, 'no,' it is a dispute originating in a boundary.

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1 Ch. XI. 1.

That, moreover, is of as many kinds as there are of a boundary. That classification states **Nârada**[1]: "One having a flag-mark, one marked by the fish, one known by a deposit, one which is undisputed, and one created by the king's command, thus a boundary is known to be of five kinds." 'Having a flag mark,' *i. e.* marked by a tree or the like; 'by the fish,' *i. e.* by water; 'known by a deposit,' *i. e.* containing husk etc., deposited after digging; 'One which is undisputed' *i. e.* which was created by the mutual agreement of the two disputants; 'created by the king's command,' *i. e.* made under the king's desire.

11 Now by the **Same Author**[2] has been briefly made the discussion of the two Next following titles. "That title of law in which the legal rules for women and men also regarding marriage and such other relations are stated, is called 'the Mutual relations of women and men.'" "Where[3] a partition of paternal estate and the like is instituted by the sons, it is called by the learned, partition of *Dâya*, a title of law." In both, by the use of the word *âdi*, 'and the like others,' itself, their multifarious variety has been indicated; 'by the sons,' is indicative, by implication, of the *dâyâdas*.

12 Of the three titles next following, however, a discussion has been made only briefly[4]: "Whatever is done by force by persons inflamed with (the pride of) strength is called a *Sâhasa*; *sahaḥ* means force in this world." 'Whatever', *e. g.* taking away by force common property, or the like act. To that effect, **Yâjñavalkya**[5]:

PAGE 6* "When common property is forcibly carried away, that is called *Sâhasa*. The use of the expression (deprivation of) 'common property', is indicative by implication of manslaughter and the like also. Hence also **Bṛhaspati**[6]: "Manslaughter, theft, assault on another's wife; and both species of assaults; thus, *Sâhasa* has been declared to be of five kinds". Thus is the multifariousness of this title which is stated by the expression 'Whatever' in the defining verse. **Nârada**[7] again states three varieties: "That again is declared to be threefold in the *S'âstras*—viz. (Sâhasa of) the first, middlemost, and the highest degree; its definition has been stated separately". The definition also has been elaborated by the **Same Author**[8]: "Destroying, reviling,

1 Also cited in the Mitâkṣharâ as of Nârada, but not found in that Smṛti See p. 1149 note.

2 Ch. XII. 1. 3 Ch. XIII. 1. 4 Ch. XIV. 1.

5 Ch. II. 230, p. 1276. 6 Cited Vyawahâra Mayûkha. 7 Ch. XIV. 3.

8 Ch. XIV. 4–6.

disfiguring or otherwise (injuring) fruits, roots, water and the like, or agricultural utensils, is declared to be a *Sâhasa* of the first degree. (Injuring) in the same way clothes, cattle, food, drink, or household utensils, is declared to be a *Sâhasa* of the middle-most degree. Killing by means of poison, weapons, or the like, indecent assault on another man's wife, and whatever other (offences) encompassing life (may be imagined) is called a *Sâhasa* of the higher degree. 'Killing' *Vyâpâdana i.e.* of various (*vividhânâm*) difficulties (*âpadâm*), by means of poison and the like, *âpadânâm*, the incurring, is *Vyâpâdanam* [1].

Likewise, the nature of Abuse is stated [2] : "Abusive language couched in offensive and violent terms regarding the native country, caste, family and so forth (of a man) are termed *Abuse*". That language which insinuates an accusation against one's country &c. and which in its implication is likely to cause intense pain, that is (called) Abuse [3]. That even is of three kinds ; so says **he** [4] : "That again is declared to be of three varieties according as it is (*Nishṭhura*) cruel, (*Aślila*) indecent, or (*Tivra*) sharp". **He** [5] states the characteristics of Nishṭhura and of other kinds : "Abuse combined with reproaches should be regarded as *Nishṭhura* (cruel); couched in insulting language is *Aślila* (indecent) ; the learned call an abuse *Tivra* (sharp) by which a man is charged with an offence causing expulsion from caste", e. g. 'Fie upon you, fool, villain' and the like harsh reproaches ; insulting; by a sign in regard to a sister; 'causing degradation' such as 'you are a wine-drinker' or the like. So also **Kâtyâyana** : "When one attacks another with (words indicative of) the organs, are marked as bad, either of facts which have or have not occurred, that language has been declared by the wise as *Nishṭhura*. Referring in speech in contemptible terms through anger to the usage of the country as well as of families, that has been stated by wise men as (*Aślila*) indecent. The speech which connects one with a *Mahâpâtaka*, as well as that which causes temper or hatred, or which involves a degradation from caste, that speech, however, has been known as (*Tivra*) sharp".

Bṛhaspati, however, here also states a threefold division into first, middling, and the last, like, as in the case of Sâhasas : "Using violent language in regard to another's country, town, family or the like, and

1 व्यापादन—simply means killing, destruction, ruin. The Author, however, gives the result of that all, viz. the incurring of various difficulties. (वि + आपादन)

2 Nârada Ch. XV. 1. 3 वाक् + पारुष्य–Lit. Roughness of language—Abuse.

4 Ch. XV. 2. 5 Ch. XV. 3.

connecting the same with a sin, without reference to any thing, that is spoken of as the first (kind of) Abuse. Declaring a secondary [1] offence in connection with a sister, or mother, is declared as the middling (kind of) Abuse by those knowing the Śâstra. A statement in regard to an uneatable or an undrinkable thing charging one with a *Mahâpâtaka* [2], is called the highest kind of Abuse, piercing severely at a vital part". 'Without anything' *i. e.* without any particular thing. **Kâtyâyana**, however, states other kinds of Abuse also: "Uttering the sound [3] of *huṃ*, or a coughing sound, and also whatever is censured among the people, mimicry in act or speech, that is declared as Abuse".

Vyâsa, however, states the characteristics of Assault [4]: "Attacking with ashes or the like, and also beating with a hand or the like, and encircling with an upper cloth or the like is declared (to constitute) Assault."

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Bṛhaspati also: "Attacking with the hand, food, stone, or stick, or with ashes, mud, or sand, and also with weapons is declared (to constitute) Assault"; on the limbs of another is the supplement. To that effect also **Nârada** [5]: "Injury to the limbs of another with a hand, foot, weapon, or otherwise, or defiling him with ashes or the like, is termed Assault" 'To the limbs of another' *i. e.* movable or immovable images.

Daṇḍa-Pâruṣhyam; harshness. This title also has three varieties; so says the **Same Author** [6]: "Of that also, three varieties have been noted, as it may be small, middling, or extreme, according as it consists in the raising (of a hand or weapon), or in an unexpected attack, or causing a wound, by regard to its effect on articles of small, middling, or superior value". The meaning is that by a comparative appreciation of the motives behind the action of the perpetrator, as also by a relative value of the particular thing the object of the attack, the threefold variety is determined as of the first, middling, or extreme kind.

It may be said, indeed, the two kinds of *Pâruṣhyas* being particular varieties of *Sâhasa*, their statement under different titles is improper. True; what is done by force (*Sâhasa*) being the peculiar characteristic of *Sâhasa*; what more-

AN OBJECTION

1 For उपपातक—See Yâjñavalkya III. 234–242. Manu Ch. XI. 59–66. Coll. pages 1701–1711.

2 For महापातक—See Yâjñavalkya III. 227–233. Manu XI. 54. Collection Pages 1683–1700.

3 हुंकार—*Huṃ*. हुं:—is a menacing sound or a sound conveying ridicule.

4 दण्डपारुष्य—roughness by an attack. 5 Ch. XV. 4. 6 Ch. XV. 5.

over is done under deceit, is certainly the subject of a different title, as the element of a *Sâhasa* is absent. So, moreover, has been stated by the **Same Author**: [1] "Here, theft is a variety of it, the particular difference, however, is stated there: *Sâhasa* is a wrong (by reason) of an attack, while the offence of theft is by (reason of) deceit." 'Wrong,' *i. e.* injury. That is *Sâhasa* when the deprivation of property is by force; while when the deprivation of property is done by (resort to) deceit, it is theft; this is the meaning.

ANOTHER OBJECTION

Indeed, by this, the varieties of theft have been stated, and not of force or harshness. True. When the varieties of that which has not been separately mentioned, have been stated, the varieties of that which has been separately mentioned happen much more to be noticed; and thus of the theft only have been stated; thus there is no contradiction. Therefore, the statement under a different title is also proper only. Hence also the **Saṅgrahakâra**: "Manslaughter and the like offences if perpetrated with violence, are called *Sâhasas*: otherwise again under their appropriate titles." 'Otherwise again,' *i. e.* if perpetrated without force, then 'under their appropriate titles,' *i. e.* under the titles of Theft, Adultery with women, Abuse, Assault; this is the meaning.

Indeed, then in this manner, Theft and Adultery with women should also be marked out (separately) from *Sâhasas*—True; hence also in the text: "Theft and Adultery with women also" have been intended as separate by **Manu** [2]. By **Nârada**, however, by reason of the fact that these two are generally caused by deceit, and the difference of title is clear, the inclusion of Sâhasa has generally been made in the objective stage. In regard to the two kinds of (harshness) *Pâruṣhyas*, however, these being generally committed by (the use of) force, the difference of a title is not clear, and so a separate mention has been made; thus everything is unobjectionable.

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After having stated that theft is different from *Sâhasa*, its threefold division also has been stated by **Nârada** [3]: "That also has been stated by the wise to be of three varieties by regard to the thing, according as the thing stolen is of inferior, of middling, or of superior value." Of inferior value and the other articles also have been indicated by him too: "Earthenware, a seat, a couch, bone, wood, leather, grass, and the like, leguminous grain, and pre-

1 Not found in the published edition of the Nârada Smṛti.

2 Ch. VIII. 6.

3 Ch. XIV. 13–17.

pared food, these are instances of articles of small value. Clothes other than those made of silk, and likewise cattle other than cows, and metals other than gold, are articles of middling value, as also are rice and barley. Gold, jewels, a silken cloth, a woman, a man, a cow, an elephant, and a horse, and property belonging to a God, a Brâḥmaṇa, or a king must be understood to be articles of superior value. The fraudulent deprivation of these by various means from persons who are asleep, insane, or intoxicated, the wise call theft." 'Leguminous grain' *i. e.* covered by a sheath, such as the black or green kidney bean or the like; 'made of silk,' *i. e.* made of yarn produced from the sheath of a worm.

Of Adultery with women, however, **Bṛhaspati** has stated three varieties: "Intercourse with women having a sinful origin, know to be of three varieties; the two caused by force or fraud, while the third, the one resulting from passion." Adultery, *i. e.* the intercourse of a man with another's wife. So also **Nârada** [1]: "With the wife of another at an odd time and at an odd place a man's sitting together, conversation, or indulging in mirth are respectively the three kinds of Adultery." **Bṛhaspati** states the characteristics of the three varieties mentioned by himself: "What is done with one unwilling or insane, violent, or intoxicated, as also with one talking in secret, but what is done by force. Having deceitfully brought home, or by offering wine, or the result of operation, sexual intercourse made with her, is known to be one made with fraud. By mutual exchange of love glances, or by the sending of a maid servant, what is done out of a passion for beauty or money, that should be known to be one caused by passion." 'The result of operation,' *i. e.* causing inducement by an operation [2].

Likewise, the **Same Author** mentions a threefold variety by regard to the first, middling, and superior quality also: "Casting sidelong glances, mirth, sending a maid servant likewise, the touch of ornaments and clothes is known as the first variety of Adultery. Sending perfumes, flowers, incense and sweet viands and clothes, and conversation in secret, is known as the Adultery of a middling nature. Seating on one bed, as also sporting, kissing, embracing, this is declared as the highest kind of Adultery by those knowing the *Śâstra*." **Vyâsa** also: "Adultery should be known to be of three kinds, the lowest, the middlemost, and the highest. Conversation with another's wife in an improper place or at an improper time, or

1 Ch. XII. 62.

2 कर्मणा वशीकरणम्—inducing by a charm, spell or other hypnotizing operation.

in a solitary place, throwing sidelong glances at each other, and (indulging in) laugh is known as the primary kind of adultery. Sending perfumes and flowers, odours, ornaments, clothes, and causing allurement by food and drink, is known as the middling variety of adultery. Sleeping and sitting in a solitary place in mutual contact, as also pulling each other's hair is known as the highest (stage of) adultery." 'In a solitary place,' *i.e.* in private. 'By pulling each other's hair,' *i. e.* sporting by pulling each other's hair. **Kâtyâyana** also mentions the varieties of adultery: "Engaged in operations through a messenger, remaining together at untimely hours and improper places, catching hold of the neckcloth in regard to the ear, nose, face &c. sitting together and eating at one place, thus adultery has been declared to be of nine varieties". 'Cloth' *i. e.* the

PAGE 9* end of the cloth. **So also**: "If one holds conversation with another's wife at a holy place, in a forest, or in a house even, as also at a confluence of rivers, such a one may be charged with adultery." 'Confluence' *i. e.* united flow. Also: "Sporting in (the form of) obligations', touch of the ornaments and clothes, as also sitting together on a cot, all (that) is declared as adultery. 'Sporting in obligation," *i. e.* pretending to do service, such as by offering beetle or the like; 'sport', *i. e.* jest. Also, "One who contacts a woman at an improper part, as also one who bears up when contacted by mutual consent, that all has been declared to be adultery." 'Improper part', such as the breast and the like parts. **Nârada**[1] also: "Also when one catches in the hand the braid or the ends of a cloth, or says 'stop, stop', all that has been declared to be adultery".

Likewise the **Same Author**[2] states the characteristics and varieties of Gambling and Betting on animals: "Dishonest gambling with dice, small slices of leather, little stones of ivory, or like others, and also betting on birds, form a title of law called Gambling and Betting on Animals". *Bradhna* is a small piece of leather. By the expression 'or like others' are included cowrie shells &c. Playing with dice &c. preceded by a bet, 'dishonestly' *i. e.* made in a crooked way is called 'gambling'. Similarly, with the 'birds' *i. e.* with cocks and the like winged animals, playing with a bet is called 'Betting on Animals'. The meaning is, that these two together make up the single title, 'Gambling and Betting on Animals'. The use of birds is indicative, by inclusion, of animals. Hence also **Manu**[3]: "That which is done by

1 Ch XII, 67. 2 Ch. XVI. 1. 3 Ch. IX. 223.

(means of) inanimate (things) is called in this world, Gambling ; when animate beings are used, that should be known as Betting on Animals". **Bṛhaspati** also : "Birds, rams, bulls and the like when caught up and attack each other under a bet made before, that they call 'Betting on Animals'.

Of the **Miscellaneous Cases**, the characteristics and kinds have been stated by **Nârada**[1] : "Title under the head of miscellaneous (cases) are to be known as transactions depending on the king ; such as, transactions under the Kings commandments, as also obedience towards his injunctions. Grants of towns, the divisions of the constituent elements of a state, the laws applicable to the *Pâkhaṇḍis*, *Naigamas*, *Śreṇis* and *Gaṇas*, as also their opposites. Likewise, disputes between father and son, transgression of penances, deprivation of donations accepted, and also the indignity caused to members of the Orders. The evil consequences of a commixture of the *varṇas*, and the rules regulating their means of subsistence ; and whatever has not been noticed in the preceding titles, all that shall be (included) under the 'Miscellaneous Title' ". Whatever has to be determined upon by the King taking upon himself the position of a defendent, such as transgression of his own commands, and what, moreover, has not been stated before in titles such as Recovery of Debts and the like, all that is called the Miscellaneous Title ; this is the meaning.

Bṛhaspati[2] : "Usury, Deposits, Invalid gifts, Trading in joint undertakings also, Non-payment of wages, Non-performance of service, Land-Dispute, Sale without ownership, Rescision of Sale and Purchase, Transgression of a compact likewise, Connection between men and women, Theft also ; share of Inheritance, and Gambling with dice." These titles arising from money transactions are, however, fourteen, are again split further into numerous subdivisions. The two kinds of assaults, murder also, and adultery with another man's wife likewise, these four titles originate in injury—so says Brhaspati. By regard to the lowest, middlemost, and highest nature, are split further on separately. Of these the particular characteristics of the four have been stated in respective order. These eighteen titles of law have been stated in the *Śâstra*. Those who know the origin of all these disputes, these are the persons (fit) to investigate (them)."

Thus in the **Smṛtichandrikâ** the discussion of the **Eighteen titles.**

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1 Ch. XVII. 1-4. 2 Ch. II. 6-11.

Now begin the **Diversities of Judicial Proceedings** under the **Smṛtis —Smṛti Vyavahâra-bhedâḥ.**

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The multifariousness of Judicial proceedings has been stated as (arising) by regard to their nature and the subject matter involved. Now, of the same, the varieties are being discussed by regard to the (existence of) wager and the like. There **Yâjñavalkya**[1]: "If a dispute is accompanied by a wager[2], then the defeated party should be made to pay." 'If I am defeated, so much shall be paid by me to the king' thus out of arrogance money agreed to be paid is called 'wager' (*paṇa*). Accompanied with that is one 'accompanied by wager.' By the use of the word 'it,' (*that*), is meant one without a wager also.

Thus a Judicial Proceeding or *Vyavahâra* is of two kinds.

So also has been stated by **Nârada**:[3] "That with a wager, and (the other) without a wager; it should be known to be of two kinds; the one with a wager with an addition, where there is a stake before the writing". Where in a judicial proceeding, before the plaint is reduced to writing, out of arrogance a stake is laid by both or by one of the disputants in an additional amount, that proceeding is with a wager; this is the meaning.

Similarly, other varieties also have been stated by the **Same Author**[4]: "That (*i. e. Vyavahâ a*) has been declared to have four feet, four bases, and four means[5]; is declared to affect[6] four, reaches four,[7] and has four[8] functions. Having eight *Aṅgas* (or members)[9], of eighteen[10] titles, and hundred branches likewise also; has three[11] sources of origin, two[12] pleas, two

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1 Ch. II. 18. 2 This is similar to the 'Wager' of the Roman Law. It is in addition to the amount in dispute. Cp. *Contested* and *Ex parte*.

वादी वा प्रतिवादी वा यः समर्थः स्वतारणे । द्रव्यं वित्तानुसारेण करोति स पणः स्मृतः ॥

3 Intr. 4. 4 Intr. 8.

5 Explained in *Nârada*–Intr. 12—thus:

सामाद्युपायसाध्यत्वाच्चतु साधन उच्यते. *i. e.* सामभेदोपासनदण्डैः (असहाय).

6 चतुर्हिंतः—चतुर्णामाश्रयाणां च रक्षणात्स चतुर्हितः—See Nârada Mtr. 12.

7 चतुर्व्यापी—कर्तृनर्थो साक्षिणश्च सभ्यान्राजानमेव च । व्याप्नोति पादशो यस्माच्चतुर्व्यापी तत. स्मृतः॥ Intr. 13.

8 चतुष्कारी—धर्मस्यार्थस्य यशसो लोकपंक्तेस्तथैव च । चतुर्णां करणादेषां चतुष्कारीति चोच्यते॥ Intr. १४.

9 अष्टांगः—राजा सदस्यः सभ्याः शास्त्रं गणकलेखकौ । हिरण्यमग्निरुदकमष्टांगः सप्तदाहृतः ॥ Intr. १५.

10 अष्टादशपदः—See above p. 15 and Nârada Intr. 16–19 and 20 for शतशाखः Supra. Verse 25.

11 त्रियोनिः—कामात्क्रोधाच्च लोभाच्च त्रिभ्यो यस्मात्प्रवर्तते । त्रियोनिः कीर्त्यते तेन व्यमेतद्विवादकृत् ॥ २६.

12 व्याभियोगः—व्याभियोगस्तु विज्ञेयः शंकातत्वाभियोगतः । शंकासतां तु संसर्गात्तत्त्वं होढाभिदर्शनात् ॥ २७.

openings[1] and two issues[2]. "The **Same Author**[3] himself expounds these varieties: "*Dharma*,[4] a judicial trial, evidence, and the Royal edict; (thus) this judicial proceeding has four feet, each succeeding supersedes the one preceding."

Indeed, the Plaint, the Answer, the Evidence, and the Decision are the (four) parts of a judicial proceeding, and not *Dharma* etc. Why (then) has it thus been stated? The reply is this. The part of a decision is of four varieties according as it is based on *Dharma* and the like. There, that according to which a particular decision is given, that is indicated by that word. Therefore the description as of four parts, by a reference to *Dharma* etc. is proper also. So also **Bṛhaspati**. "By *Dharma*, by a judicial trial, by evidence, and by the Royal edict, by these four means a decision has been stated (to be reached) on a doubtful point."

Of the four kinds of decisions also, **Kâtyâyana** states the characteristics: "Where the wrong-doer is made answerable for the act, and the owner of property secures his rights, such a proceeding is according to *Dharma* only." 'Wrong,' such as klling etc. 'Act,' wrong-doing. "Whatever *smṛti* rules have been published by the *Dharma*-operators for the purpose of deciding proceedings, these indeed are known as *Vyavahâra*." The meaning is that *Vyavahâra* is a decision reached in accordance with legal principles and in conformity with the plaint, answer etc. "Whatever is practised by one whether it be according to *Dharma*, or not according to *Dharma*, (but) always in conformity with the usage of the country, that indeed is *Charitra* (custom)." The meaning is that a decision following that is also similarly declared.

"Without being in conflict with the principles of justice, as also with the observances of the country, that law which the king may promulgate, that Royal edict is according to law." This is the meaning of this: A decision which has been reached by the king's mind only, (but) which is not opposed to any other (source of) authority is called the Royal edict.

Here, of each kind **Bṛhaspati** states two further varieties: "Each one has been declared to be of two varieties by the wise by reason of a difference in

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1 द्विद्वारः—पक्षद्वयाभिसंबंधाद्द्विद्वारः समुदाहृतः । पूर्ववादस्तयोः पक्षः प्रतिपक्षस्तदुत्तरम् ॥ Mtr. 28.

2 द्विगतिः—भूतच्छलानुसारित्वाद्द्विगतिः स उदाहृतः । 29.

3 Intr. 10.

4 The same Author explains these thus;
तत्र सत्ये स्थितो धर्मः व्यवहारस्तु साक्षिषु । चरित्रं पुस्तकरणं राजाज्ञायां तु शासनम् ॥ ११ ॥.

the mode of proof." The twofold character also has been pointed out by the **Same**: "Where, after carefully considering the point at issue, it is deliberated upon skilfully, and has been tested by (statements on) oaths, that has been declared to be a decision according to *Dharma*. Where the defendant admits, such a decision is legal; or that which has been properly tested by ordeals; such a one has been declared to be the second." The meaning is, that what has been made along with *i. e.* in accordance with principles is the first kind of decision called legal. Without recourse to the principles, that which is declared upon an admission of the claim in the answer, or is tested by ordeals, such is the second. "Where a decision has been reached by regard to the means of proof, a chicanerous answer being regarded as 'no answer,' that is declared as the second." The proof here contemplated is human testimony, that which is decided by means of an ordeal being regarded as coming within a *Dharma* category. "What is decided by inference is called *Charitra*, in accordance with the state of the country, is the second kind declared by the adepts in the Śâstra." "Inference," *i. e.* based upon a sign such as a burning faggot in the hand and the like. "That decision, however, which is devoid of proof such a one is called the Royal edict; so another is stated to be by reason of its being unopposed to *śâstra*."

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The meaning of the expression 'devoid of proof' has been explained by **Vyâsa**: "A document, witnesses, and possession, thus proof has been stated to be of three kinds in the *smṛtis*. The wise regard inference, as well as logical deduction as the cause. The usage of a country established in the past is called *charitra*. Truth, balance etc. in support of the point at issue are known as oaths. In the absence of these, the wise regard the king's command as a decision."

Indeed, if it be so, then the text of **Nârada**, viz. 'the each succeeding supersedes the one preceding' becomes inconsistent, as a decision based on principles being *par excellence* the best, the one preceding would supersede the one following, and by reason of the text of **Yâjñavalkya**[1]: "After discarding all circumvention, the king should decide disputes according to the actual facts." The answer is; true, such is the general rule; but in some matters, the one following does certainly supersede the one preceding; it is in regard to that is this text of **Nârada**. Thus for example, where by a particular member of the Kṣhatriya or other varṇa, has been

1 Book II. 19.

committed the offence of contacting or the like, in regard to the wife of the king or the like ; and having done it, such a one gives a denial through fear of life, and witnesses also are cited ; these too when questioned by the king, intending that this man may not be punished with death, make a false statement that 'this man did not do the act,' then one who has committed an offence has not been fixed with it, the *Dharma* is contradicted by *Vyavahâra* ; but such supersession of *Dharma* is proper also, as a false statement by witnesses has been permitted by the **rule**[1] "Where men of the (four) orders are (likely) to suffer capital punishment."

Where, moreover, a certain person, such as a cowherd or the like, is charged by some one that 'he has had sexual intercourse with another man's wife, and that there are witnesses,' and he replies, 'this statement of the witnesses is true ; still also I am not punishable, as I have done this on the strength of *charitra* or usage, and this has been entered by the king in the book,' then *Vyavahâra* is superseded by *charitra*, as the punishment which was due under a *Vyavahâra* (a rule of the law) has been negatived by usage (*charitra*).

Moreover, the supersession by *charitra* or usage here is proper also, vide the **text** : "A dealing between the members of a village, cowpen, town, guild, caravan, or an army, should be decided by regard to usage, so says Brhaspati."

Usage or *charitra* also is at times superseded by the Royal edict ; where there is usage that no king's officer shall enter into the inner apartment of a family house, and thereafter it became known to the king that a certain criminal had entered a house ; and then a certain officer of the king was ordered that after entering the house that accused should be brought, on such an occasion the usage even is superseded by the king's command ; as restraining the guilty being a necessary duty, the king's command has greater force than usage.

Bearing in mind a subject of this type, it has been stated by **Bṛhaspati** also : "Where by placing reliance on *śâstra* merely, a decision is made, that should be known to be a judicial proceeding ; by that also the *Dharma* is developed.[2] By (regard to) the

PAGE 12* condition of the country, by inference, in conformity with the *Nigama* rules also, where a decision is reached, there the legal rule is superseded. Setting aside the prevailing

1 Yâjñavalkya II. 83 (1), Collection p. 886.

2 तेनापि वर्धते ; another reading is तेनापहीयते is *i. e.* superseded by it.

custom where a king makes a decision with any authority, that is the king's command ;'by that usage is superseded."

The subject under discussion is now being discussed. By way of explaining the expression 'four bases,' **he**[1] says : " There, on truth is based *Dharma*, while a judicial proceeding (rests) on (the statements of) the witnesses; *Charitra* on declarations[2] reduced to writing, and on the command of the king, an edict." The mention of witnesses is indicative by implication of *Dharma S'âstra*, as also of the means of proof, other than the ordeals. 'Declarations reduced to writing,' *i. e.* a document. **He states**[3] the four means : " Because the few means of conciliation and the rest are adopted, it is said to have four means." The import is that an agreement may be reached between the contending parties by means of conciliation and the like ways. The **Author**[4] states the benefit to the four. " Because it protects the four orders, therefore it is said to benefit four." The use of the word 'orders' (*âśramas*), is intended to indicate the four *varṇas* also. The **Author**[5] states how it reaches four : " Because it affects criminals, witnesses, the court assessors, and the king also to the extent of a quarter each, therefore it is said to reach four." **The Author**[6] states how it produces four results : " Because it brings about these four, viz. (*Dharma*) justice, wealth, renown and esteem among the people, therefore it is declared to produce four results." 'Because it brings about these four, viz. (*Dharma*) justice, wealth, renown and esteem among the people,' *i.e.* regard of the people. The **Author**[7] states the eight members or *Aṅgas* : "Because it consists of the King, together with his officer, the assessors of the Court, *S'âstra*, the accountant and the scribe, gold, fire, and water, therefore it is said to have eight members". The use of these, moreover, we will point out further on. The exposition of the eighteen titles and hundred branches already made in the former section, may be followed here.

The **Author**[8] states the three efficient causes : "Because it proceeds from carnal desire, wrath, or greed, therefore it is said to have three different causes ; these are the three sources of disputes of law." *i. e.* in all cases according to the exigencies. The **Author**[9] states the two modes of plaint : "It is said to have two modes of plaint, because a plaint may be either founded on suspicion or on fact." Here also **He**[9] gives an example : "On

1 चतुःस्थानम्. Nârada. Intr. 11. In this text has been stated a progressive, appreciation of the relative force of the several means of proof. Admissions by parties witnesses, documents and Royal edicts, see *Asahâya*.

2 दुस्तकरणे—other readings are स्वीकरणे, or प्रश्नकरणे. 3 Intr. 12. 4 Intr. 12.

5 Intr: 13. 6 Intr. 14. 7 Intr. 15. 8 Intr. 26. 9 Intr. 27.

suspicion, by reason of contact with bad people, and on fact at the sight of the stolen article." "On account of association with rogues, thieves, and the like bad people, a suspicion of theft may occur even in regard to a good man. The sight of the stolen article or the like, or the tracing of a mark of a portion of the stolen thing, or actual sight. Association with the bad is (stated) only as an example. Even of the good people though rich, by reason of the association a doubt is likely to arise as to a deposit. Therefore this is not the definition of a complaint based on suspicion.

The **Author** [1] states the two openings—"Because it is based on the statements of the two litigants, therefore it is said to have two openings. Of these, the first complaint is called the plaint, and the declaration of the opponent, the Answer", *i. e.* in the dispute. Opening *i. e.* the desire for the commencement of the suit.

The **Author** [2] mentions the two issues: "Because it may be founded either on truth or an error, therefore it is said to
PAGE 13* have two issues. Truth is what rests on true facts. Error is what rests on a mistake of facts" **Hârîta** also mentions some varieties: "Having one basis, arising from two, resting on two, and having two results likewise". **Kâtyâyana**, however expounds these: "The origin of the point to be established what has been stated by the plaintiff; non-delivery of what is due to be given and injury are the two starting causes. The *Dharmaśâstra* and the *Artha Śâstra* have been declared to be two shoulders, and success as well as failure have been declared to be the two fruits". 'Failure', *i. e.* defeat.

Likewise, another division even has been pointed by the **Same Author** also: "The first complaint, the answer, the deliberation, and the adducing of proof; thus it has been declared to be having four feet". *Pratyâkalitam*—'the deliberation'. After the acceptance of the Answer (of the Defendant), the deliberation and decision of the Chief Judge and others, as to who of the two contending disputants should have 'the right to begin' his evidence. *Kriyâ*, 'proof' documents and such other evidence; the adducing of that is the portion 'relating to proof'. By reason of the point in dispute becoming the concluding portion of the proceeding, the parts relating to the deliberation and the proof also are the judicial proceeding, and therefore has it been stated that it has been declared 'to have four feet'.

1 Intr: 28. 2 Intr: 29.

Hence also by the **Saṅgrahakâra**, the concluding portion also has been characterised as a 'Judicial proceeding' : "In cases of disputes among men for their mutual interests, the adjudication of a just claim upon the statements is called a judicial proceeding". Some say that the deliberation is that portion (of the proceeding) which consists of the exhibition of the result decisive of the success or defeat which removes all doubts about time or illusory evidence. In their opinion it is only the number of the feet that is comprehended and not the order, as the part containing the deliberation falls to be the last.

As to what has been stated by **Yâjñavalkya**[1] : "If it (the proof) succeed, he obtains success ; if otherwise, the reverse" ; there also, by the word 'success' is indicated the deliberative part resulting in success, and not in the form of success or defeat, as that exists even in an answer of admission (of the claim), and as there would be the possibility of a contradiction with the text, "Of two feet in (cases of) admissions". Therefore the text of **Yâjñvalkya** has the same import as that of **Kâtyâyana.**

Others, moreover, describe this text as having the same import as the text : " On account of the plaint, the answer, the proof, the point to be established ; by the establishment of these in order, as it is cast in four parts, it is described as having four feet." In an answer of 'admission' however, no means of proof being indicated, and the point in the plaint not being necessitated to be established, there is no part containing the point to be established, and the establishment, and thus there is no contradiction with the text 'of two parts in cases of admission.' In this point of view, the order of the parts also has been pointed out in **another Smṛti** : " There, the part containing the plaint is the first, the second is the answer likewise, the part containing the proof is the other, and the fourth has been declared to be the decision."

Thus in the **Smṛtichandrikâ** the **Divisions of Vyavahâra.**

Now the Determination of the **Deciding Authority. Nirṇetṛ-nirṇayaḥ.**

There **Bṛhaspati** : " A judicial proceeding, although one, has been declared to be of numerous varieties by the wise ; of that, the deciding authority is the king, as also a very learned Brâḥmaṇa."

PAGE 14* Brâḥmaṇa, known as the *Prâdvivâka*—the chief Judge. So says the **Same Author** : "In a contested cause, he asks questions, and

1 Ch. II. 8

cross questions likewise, speaks suavely, and at first, and therefore is called a *Prâdvivâka*[1]. The meaning is, that he puts questions to the applicant and the respondent, therefore he is *Prâṭ*; and he declares the decision and with particularisation, so is *Vivâka* [1]; the designation so is literal. By **Nârada** also, while elaborating versatility in a Brâhmaṇa, this designation has been pointed by another method: "One who is thoroughly versed in the eighteen titles of law, and who knows the eight thousand divisions of these, who is an expert in the science of politics and the like, and is a devoted student of Revelations [2] and the rules of tradition; he who examines the (rules of) law relevant to the point in dispute, and comes to a deliberated decision on the point under consideration, is therefore called *Prâdvivâka*." Thus by both methods also *i. e.* by the literal and traditional interpretations, the result as a fact also has come to be stated. Moreover, it has been stated directly by **Nârada** [3]: "As an experienced surgeon extracts a dart by means of surgical instruments, even so the chief justice must extract the dart (of injury) from the lawsuit."

"A Brâḥmaṇa also": in this expression the word 'also' is indicative of inclusion of other judges also Hence also **Manu** [4]: "In these places, of men carrying on a dispute intensively, by resorting to eternal rules of law they should make the decisions of these." 'In these places,' *i. e.* under the eighteen titles. **Kâtyâyana** also: "A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister [5], the religious preceptor, the Brâḥmaṇas, and the councillors." 'The Chief Judge,' having the qualities as stated before. One carrying on with him, is one 'with the Chief Judge.' In this manner in expressions 'with the ministers' and the compounds should be expounded in accordance with the number which will be mentioned hereafter.

Of a minister, moreover, the characteristics have been mentioned by **Vyâsa**: "One should install a twice-born man as a minister, who knows the import of all the *S'âstras*, is free from greed, is expected to speak justly, a Vipra, a versatile scholar, and descended in a long-continued heredity."

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1 प्राद् + विवाक—He interrogates, investigates, and decides.

2 श्रुतिस्मृतिपरायण·-श्रुति—What is heard; the Vedas; the Revelations. स्मृति-What is remembered—the Tradition. 3 Intr. III. 16. 4 Ch. VIII. 8.

5 अमात्य अमा-near, and त्य-तिष्ठति—One who is in constant attendance upon a requisition. In the popular usage, he is one of the eight ministers, composing the Cabinet of Ministers.

Although the word *Vipra* was already used, the mention again of the word 'twice-born' is with the object of indicating that when a Vipra possessed of the aforestated characteristics cannot be found, a Kṣhatriya, or a Vaiśya possessed of these characteristics may be installed, but not a śûdra. Since, says the **Same Author**: "Leaving aside the twice-born, one who investigates causes along with the *Vṛshalas*, of such a one, the nation becomes agitated, and his power and treasury also become extinct." 'A minister', in this, the singular number is only indicative, as it is in regard to the point under consideration; since in the text "together with ministers and experienced councillors, preserving a dignified appearance, should he enter the Council Hall" of **Manu**[1], a rule having been laid down in regard to the entering into the assembly with many councillors, the special mention in the expression 'experienced councillors,' is with the object of demonstrating that by reason of their versatility in the rules useful for the matters to be disposed of, there is use for these here.

Similarly, in regard to the Brâḥmaṇa also, a plurality has been mentioned by the **Same Author**[1] in the first half: "A king desirous of investigating law-suits, along with Brâḥmaṇas" 'Along with Brâḥmaṇas,' *i. e.* with the learned, is the implication. So also **Yâjñavalkya**[2]: "A king should administer justice along with learned Brâḥmaṇas." Although, of these in regard to learning and the plurality of Brâḥmaṇas in the sabhâ, and in regard to the qualification of goodness, there is no distinction with councillors, still by regard to these not being appointed, a distinction from these should be inferred. For, these (*i. e.* the councillors) are appointed, hence also **Vasiṣhṭha**[3]: "Whether appointed or not appointed, knowing the Dharma, he must speak; such a one utters a divine declaration, who follows the Sâstra." As to what has been stated by **Nârada**:[4] "One who has not been appointed, must not speak on any account in a judicial proceeding; by one, however, who has been appointed must be delivered his opinion without any bias towards any party" that has a reference to one who was unappointed and who had happened to be in regard to another business; otherwise there would be a contradiction with the text stated before; also it would secure the co-operation of Brâḥmaṇas, and avoid a difficulty in regard to the other business.

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1 Ch. VIII. 1. 2 Ch. II. 1. 3 Not found in Vasiṣhṭha; but see *Nârada* Intr III. 2. 4 Intr. III. 1.

PAGE 15* The *Purohita* 'the religious preceptor', however should be one only. So also **Vyâsa**, "The King should invest a Brâḥmaṇa from the North devoted (to his interest) as the *Purohita*[1], one who is accomplished in the study and knowledge of the Vedas, who is noncovetous, and who is truthful". Here singleness is intended, just as in the rule[2] 'He cuts the pole' by reference to the object aimed at. By saying 'devoted', the author points out that the Purohita should correct any unbridled inclination of the King in regard to the punishable and the unpunishable. Hence also, in the case of a transgression by the King of the rule of punishment, a penance has been stated by **Vasiṣṭha**[3] for the Purohita even: "If one who has incurred a punishment is allowed to go free, the King shall fast for one night, for three nights the Purohita; the Purohita shall observe the kṛchchhra for a punishment against one not deserving of punishment; for three nights the king."

The assessors, moreover, (may be) many. So also **Nârada**[4]: "The king, however, should select as assessors[5], religious men of tried integrity, who are able to bear, like good bulls, the burden of the administration of justice." The meaning is that he should appoint assessors for the purpose of investigating judicial proceedings, by means such as (of giving them) money remuneration and doing honour to them, and the like means, so that these will not depart from the established rules in the courts. 'Who are able to bear the burden of the administration of justice'? anticipating this (question) says **Yâjñavalkya**:[6] "Men accomplished in learning by the study and knowledge of the Vedas, who know the law, and who speak the truth, should be appointed as assessors by the king, and who are also evenly disposed to friends and foes alike." These also, the Brâḥmaṇas only; so says **Kâtyâyana**. "Moreover, he (*i. e.* the king)

1 The Purohita referred to here is not the ritual priest of the Royal family It is a special Officer of the Court that is in contemplation.

2 The maxim here referred to is the यूपकर्मन्याय–See Mîmâṁsa V. 1-27 (fourteenth Adhikaraṇa), and XI. 3. 3-4 & 57 (third and fourth Adhikaraṇas). 'दीक्षासु यूपं छिनत्ति' in this, the cutting of the pole has been ordained; here acts such as cutting, paring etc. have been prescribed in regard to the pole. The question arises whether for each of these acts different poles are contemplated, or these are to be performed on the one and the same pole; the answer is that as all these acts are in regard to the same object, one pole only is meant. So here, the several qualities stated are to be concentrated in one person, so that it is only one पुरोहित who is contemplated.

3 Dh. S. XIX. 40-42. 4 Intr. III. 4. 5 सभ्यान्–members of the assembly or court. 6 Book II. 2.

accompanied by assessors or councillors, who are steady, are special scholars, are of high parentage, and who are the best of Brâhmaṇas, who are clever in interpreting the meaning of *Dharma S'âstra*, and who are accomplished in politics." Here **Bṛhaspati** mentions those who should be excluded: "Those who are ignorant of the usage of the county, who are unbelievers, or are excluded by the *S'âstra*, the arrogant, angry, covetous or distressed, must not be referred to in regard to a decision."

Likewise, the rule as to their number also the **Same Author** states: "Where, *Vipras* knowing the usage of the people and the Vedas, as well as the law, and being either seven, five, or even three, are sitting, that assembly is equal (in sanctity) to a sacrificial assembly." Here, it should be understood, that in the case of the Chief Judge and others, by reason of money payment, these have only to assist, as is the case with the *Ṛtwik*, but they have no authority. The authority for deciding suits, however, is of the king only. Hence also here by the expression 'along with the Chief Judge' and the like, is the reference of him alone as the principal, and not of the others. The connection with the result also has been stated to be for him alone, and not of the others. Likewise, for not doing it, a sin having been pointed out in the smṛti, the permanent authority also is of the king only, as in the text: "A king punishing the innocent (*i. e.* who did not deserve a punishment), and not punishing the guilty (*i. e.* who deserved a punishment), brings great infamy on himself, and goes to hell." A fault has been attributed by **Manu**[1] to the king himself. Hence also a rule has been pointed out by the **Same Sage**[2] in regard to others than the king, when entering a court: "Either the court must not be entered, or the truth must be spoken; a man who either speaks nothing, or speaks falsely, becomes sinful (guilty)." Moreover, a rule has been stated by **Bṛhaspati** for the king in regard to his entering the court. "The king should investigate into the suits only when surrounded by three assessors, after entering the court and either sitting at the head or standing only." The meaning is 'accompanied by three assessors only' and not by one or by two. Therefore there is no contradiction with the number of assessors mentioned before. Therefore it has been established that as in the Râjasûya sacrifice, so in regard to the decision of judicial proceedings, the authority is of the king alone.

Moreover, here, by the word king is demonstrated by a secondary implication, any one performing the function of a king such as the prote-

1 Ch. VIII. 128. 2 Ch. VIII. 13.

ction of the subjects and the like, whether (he be) a kṣhatriya, or of any other caste and anointed or unanointed, and not a

PAGE 16* kṣhatriya[1] only, after (the manner of) the rule in the *Aveṣhṭi*[2] maxim under which the word king in

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1 The Author of the *Smṛtichandrikâ* says that the word King here is not to be taken to be restrictively applicable to the *Kṣhatriya* alone, but it is used as indicative of any one who performs the function of the King, viz. the protection of the subjects etc. and that the word King is used here in its secondary and general sense as indicating one who governs, be he born a Kṣhatriya or of any other Varṇa, be he duly anointed or not etc.

For the word राज्य (Kingship) is explained as the function of a राजा; and a राजा is one who is born a Kṣhatriya as is asserted in the *Anveṣhṭi Nyâya*.

2 अवेष्टिन्याय—अवेष्टि means expiation (of sins) by sacrifices. See Jaimini II. 3. 3. अवेष्टौ यज्ञसंयोगात् क्रतुप्रधानमुच्यते। Second Adhikaraṇa. Also see further on, XI. 4-3 (9-11.) (Third Adhikaraṇa). अवेष्टौ चैकतन्त्र्यं स्याल्लिङ्गदर्शनात्। (९) वचनात्कामसंयोगे (१०)। क्रत्वर्थामिति चेन्न। वर्णसंयोगात् (११). See pages 93 and 653 of जैमिनीन्यायमाला. Vol. 24.

In the chapter on *Râjasûya* sacrifice, a sacrifice called अवेष्टि *Aveṣhṭi* is stated in the *Śruti*:

"आग्नेयमष्टाकपालं निर्वपेत्, हिरण्यं दक्षिणा। ऐन्द्रमेकादशकपालम्, ऋषभो दक्षिणा।
वैश्वदेवं चरुम्, पिशङ्गी षष्टीही दक्षिणा &c।

"He offers a cake baked on eight potsherds to Agni, with gold as the *dakṣhiṇâ*; a cake baked on eleven potsherds to Indra with a bull as the *dakṣhiṇâ*, boiled rice to the विश्वेदेवस, and for the *dakṣhiṇâ*, a tawny coloured cow of six years etc.

The question is whether in these ceremonies the parts should be performed all at a time (तन्त्रेण) or separately (आवाप). The reply is that they are to be performed at a time, (तंत्रेण) because there is a लिंग (a).

In the same sacrifice, occurs further the text:

यदि ब्राह्मणो यजेत बार्हस्पत्ये मध्ये निधायाहुतिं हुत्वा तमभिधारयेत्।
यदि राजन्यः ऐन्द्रम्। यदि वैश्यः वैश्वदेवं *i. e.*

If a Brâhmaṇa offers a sacrifice, after placing it in the middle and making an oblation to Bṛhaspati, he should sprinkle ghee over it; if a Râjanya, to Indra, and a Vaiśya, to Viśvedeva". Here, "मध्ये निधाय.....placing in the middle &c." indicates one performance. There is that another text which refers to a special desire e. g. एतयैवान्नाद्यकामं याजयेत। 'Let one be made to offer a sacrifice, who has a desire for food &c." Thus there is unity of purpose and number which shows that the *Aveṣhṭi* is one, and that the subordinate parts should be performed once for all.

The position may be briefly put in the words of *Śabara Swâmin* thus: (1) राजा राजसूयेन स्वाराज्यकामो यजेत is the inceptive text for the राजसूययज्ञ. In the same context occurs further the text (2) आग्नेयमष्टाकपालं etc. Then also occurs further on the text (3) यदि ब्राह्मणो यजेत etc. In regard to these texts, there arises the question—Do these texts refer to the Brâhmaṇa, Kṣhatriya and Vaiśya as laying down the condition under which the details—e. g. as to *Bârhaspatya, Aindra* &c.—are to be adopted at the Râjasûya, or is the *Aveṣhṭi* a distinct sacrifice prescribed? The answer is that the *Aveṣhṭi* is an independent sacrifice and applicable only to the Kṣhatriya caste (For a detailed discussion see शाबरभाष्य on II. 3. 3.)

the Vedic command 'A king should perform a Râjasûya sacrifice,' is restricted to the kṣhatriya varṇa and is the principal object, under its literal aspect, viz. kingship is the function of a king. The use of the word king as indicating one who governs has been regarded as secondary in the use of that word by the Aryas such as Manu and others, as has been stated in the *Aveshṭi* (topic) *Adhikaraṇa* itself.

Therefore, by **Bṛhaspati**, the (duty of) entering the court has been pointed out: "After getting up in the morning, and after having performed the ablutions in accordance with the rules, having duly honoured with flowers, ornaments and clothes the elders, the scholars in Astrology, the medical doctors, the Gods, the Brâḥmaṇas and the priests—all these according to their merits, and after having paid obeisance to the preceptors and the like, the leader at the head should enter the court." For this reason also the investigation of suits has been stated to be by the same, by **Yâjñavalkya** also:[1] "The king should investigate complaints etc."

As to what has been stated by **Prajâpati**: "A king consecrated by anointment, or a Brâḥmaṇa well versed all round, when seated on the seat of justice, should investigate complaints, unperturbed." 'Unperturbed' *Anulbaṇaḥ i. e.* unarrogantly, this even is intended as laying down a command that an anointed king should investigate complaints, and not as prohibiting others; for in that case there would be the incongruity of a restrictive exclusion (Parisaṅkhyâ.)[2] Hence also by the **Same Author** has been stated thereafter: "In this manner, the Kṣhatriyas, or the headmen[3] in their own country severally; while in the case of other kings, a leading Brâḥmaṇa should do (it)." The meaning is that seated on the seat of justice, free from arrogance, the Kṣhatriyas and the Sâmantas should investigate disputes. Other kings, however, *i. e.* of the Brâḥmaṇa, Vaiśya or other castes, for the purpose of accomplishing their duty should always invest a leading Brâḥmaṇa alone as the investigator of disputes. As for the alternative course stated by the same Author viz. "Or a Brâḥmaṇa well versed all round," that also is not intended as demonstrating the right of a Brâḥmaṇa, but as indicating that without the king, even a well-versed Brâḥmaṇa or a Chief Judge may investigate under the king's

1 Book II. 1. 2 See note 3 on pages 212–213 Mitâkṣharâ. Collection Vol. II. (1).

3 सामन्त—समन्ताद्भवाः—those who belong to the neighbourhood. One living on the border. It also means a feudatory prince as contrasted with a paramount sovereign आधिराज. It also means a leader, e. g. in a village, the headman.

authority ; as it has been already pointed out [1] before that a Brâḥmaṇa has no authority to investigate disputes. Hence also **Viṣhṇu** [2]: "Or he should appoint a Brâḥmaṇa for investigating disputes." With this import also, **Bṛhaspati** even : "The king should investigate causes or a twice-born Chief Judge, by placing before him the principles of justice, and abiding by the opinions of the Sabhyas and the *S'âstra*." This, moreover, is an alternative course when the king himself does not look into, and then only. To that effect also **Manu** : [3] "When, however, the king does not himself investigate the causes, then he should appoint a learned Brâḥmaṇa for trying the suits." "Learned," *i. e.* well versed. Hence also **Kâtyâyana** : "One who has studied one branch of learning (only) will not know how to decide causes ; the efore the best of the versatile should be appointed by the kings in regard to disputes." The use of the word 'versatility' is with a view to indicate other qualities also. So also it has been said : "One who is not hard, is sweet, of an affectionate disposition, born of (a good) heredity, farsighted, energetic and uncovetous also, should be appointed by the king in (the matter of) a dispute." **Kâtyâyana** also: "When the king does not himself decide a cause, then in such a case he should engage a Brâḥmaṇa who has mastered the *S'âstras*. One who is vigilant, well-born, impartial, not likely to create distrust, who is firm, who is afraid of the next world, devoted to religion, is industrious, and devoid of anger." "When" *i. e.* owing to absorption in another business, is the supplement. To that effect also **Yâjñavalkya** [4] : "Unable to attend to the administration of justice on account of other engagements, by a king should be appointed to work (in his place) along with the councillors, a Brâḥmaṇa knowing all laws." The meaning is that on account of his being engrossed in another business weightier than the administration of justice, by a king not (being free for) investigating causes, with three assessors only should be enjoined the Chief Judge, and not along with the Amâtya or other ministers. Hence also **Manu** [5]: "That (one) shall carefully investigate his causes accompanied by three assessors only, having entered the leading court, and either sitting or standing." The restriction in the expression 'assessors only' is intended to exclude others ; and 'by three' is intended to exclude [6] the number of five or seven. With this very

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1 See p. 26 ll. 15 &c. above. (Sanskrit p. 15. ll. 19–20.)
2 Ch. III. 51. S. B. E. p. 20. § 73. 3 Ch. VIII. 9.
4 Book II 3. 5 Ch. VIII. 10.
6 See Bâḷambhaṭṭi p. 3. l. 14. कपिञ्जलाधिकरणन्यायेनेति भावः । See Jaimini Ch. XI. I. 38–45 (Eighth Adhikaraṇa) Ânandâśrama Series Vol. 24 p. 625.

import **Vyâsa** also: "Since he interrogates with effort in pursuance of the point in dispute along with the assessors and by means of which he investigates, therefore he is called the *Prâḍvivâka* 'the Chief Judge'." Here **Kâtyâyana** [1]: "Where a Brâḥmaṇa is not available, there (the king) should appoint a Kṣhatriya or a Vaiśya who is learned in law; he should, with effort, avoid a Śûdra." 'A Brâḥmaṇa' *i. e.* a learned one. To that effect the **Same Author**: "Where a Vipra is not found who is learned, there (the king) should appoint a Kṣhatriya, or a Vaiśya knowing the *Dharma S'âstra*; one should with effort avoid a Śûdra." In the expression 'Kṣhatriya' appears to be contemplated a 'learned,' as has been (the qualification) directed to be in the case of a learned Brâḥmaṇa. In saying 'with effort,' the Author points out that by non-exclusion, great harm would take place. That has, moreover, been spoken to by **Manu** [2]: "Of a king, for whom a Śûdra makes the examination of the law, of such a one the kingdom sinks low, like a cow in a morass." Thus, even when a Kṣhatriya or a Vaiśya knowing the *Dharma S'âstra* is not available, a Śûdra should be avoided. To that effect, moreover, has been stated by the **same Author** [3]: "A Brâḥmaṇa who subsists only by the name of his caste, or one who merely calls himself [4] a Brâḥmaṇa, may be an interpreter of the king's laws, but never a Śûdra on any account." 'Who subsists only by the name of his caste,' and not one who earns his subsistence on account of his learning and character.

Vyâsa, however, states a fault in accepting a Śûdra, in the post of a minister even: "Leaving aside the twice-born, one who looks into the causes in company with the Śûdras, of such a one the nation will be violently agitated, and his force and treasury also will perish". The import is, that therefore, to avoid this calamity, even in the posts of ministers and the like, he should exclude the Śûdras. Likewise, by way of pleasing the nation, one should have in the assembly the company of some tradesmen also; so says **Kâtyâyana**: "Attended by a number of tradesmen from guilds, and possessing the qualification of a good family, character, advanced age, and opulence in wealth, and devoid of jealosy". 'From guilds', *i. e.* belonging to a group. Likewise, the

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1 See Vyavahâra Mayûkha Sk. Text. p. 2. l. 24. Engl. Tr. p. 5. ll. 7–9.

2 Ch. VIII. 21. 3 Ch. VIII. 20.

4 ब्राह्मणब्रुवः—The suffix ब्रुव is used to indicate that a person professing or pretending to be, or calling himself by a name to which he has no real title. ap मन्य also used in a similar sense. e. g. पंडितंमन्य । ब्रुवः शब्दः कुत्सायां । मेधातिथिः

Same Author mentions their duty also, "There, the tradesmen should be invested as investigators of justice".

Similarly, an accountant and a scribe should also be created by the King; so says **Bṛhaspati**: "The King should appoint two persons as an accountant and a scribe, who know the principles [1] of the science of words and names, who have studied the lexicons, who are skilful accountants, who are pure, and who are acquainted with various alphabets". **Vyâsa** also: "The King should appoint an accountant who is an accomplished scholar of the three sections of the science [2] of the heavenly bodies, who can yield a clear result, and who is accomplished in the study and knowledge of the Vedas. He should appoint one with a clear handwriting, who can use appropriate words, who is pure, who can use clear syllables, who has subdued anger, is uncovetous, and who is truth-speaking". 'Who is an accomplished scholar of the three sections of the science of the heavenly bodies', *i. e.* who is an accomplished scholar in the three parts of the science of Astrology viz. *Horâ* [3], Mathematical calculation and the constituted Texts [4]. The qualification 'accomplished in the study and knowledge of the Vedas' is intended to establish that the accountant should be of the twice-born class, as such a one is impossible from among the Śûdras and the like. The scribe also, as he is in company with him should also be a twice-born only. Hence also, with a view to obviate the twice-bornness of Sâdhyapâla, the inclusion of a Śûdra has been made by the **Same Author**: "A *Sâdhyapâla* should be appointed by the King who would bring about the accomplishment of the object to be established, one who is a hereditarily born Śûdra, strong, and one abiding by the orders of the assessors". 'Of the object to be established' *i. e.* such as summoning the plaintiff etc. the defendant, witnesses &c. So also **Bṛhaspati**: "For summoning the witnesses, the Plaintiff, and the Defendant and for their protection, a truthful and confidential man should be appointed, subject to

PAGE 18* the authority of the Assessors". 'Summoning', *i. e.* inviting to come. The meaning is that one's own

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1 शब्दाभिधानतेत्त्वज्ञौ—Berrodaile translates: 'Skilled in expounding words'; while Mandalik. "Who know the principles of grammar".

2 ज्योतिषामिज्ञं—one well versed in Astrology and Astronomy.

3 होरा—horoscopy. The rising of a zodical sign—होरा तु लग्ने राश्यर्धे रेखाशास्त्राभिधेऽपि; (मेदिनी).

4 संहिता—a continuous systematic collection of texts put together.

man who is born in a hereditary line, such a one should be appointed by the King (to work) subject to the authority of the Assessors.

In this manner these places of decision of a high type have been stated by Manu and others. By **Bhṛgu**, however, has been stated even the 'lower type of the places of justice. "Bhṛgu stated ten places for disputes and five (more) also, by which disputants having reached a state of difference, reach a decision." These fifteen places moreover, have been pointed out by the **Same Author** : "The foresters, however, should do by those of their own, those of a caravan, by the caravans ; the army men by the army men ; in a town even, by the inhabitants of both. The familymen, the leaders of caravans, the inhabitants of towns and villages, adopt a place as desired with the consent of both. The Villagers, Townspeople, Associations, Guilds, men learned in all the four lores, members of particular groups, families, and members of families, persons appointed, and the King likewise". Here the first five places are for the special classes of men such as the foresters and the like only. In a dispute between men established in the form of a town, the decision is by the residents of the neighbourhood. Men of a family, leaders of caravans, and inhabitants of towns and villages, select a place approved of by the unrepentant plaintiff and defendant. The ten places such as the village and like others are common. *Grâma*, 'a town, or a village' *i. e.* people settled in the form of a village or town 'Townspeople', *i. e.* the assemblage of the inhabitants of a town. *Gaṇaḥ* 'Association' *i. e.* a collection of families or under the Smṛti of **Kâtyâyana** 'An assemblage of families, however, is called *Gaṇa*" (*Association*). 'Guilds', (Śreṇis) the eighteen lower classes such as the washerman, and like others. 'Men learned in the four lores,' *i. e.* men versed in the four branches of knowledge, such as the metaphysics and the like. The word 'also', *cha*, in the expression 'men learned in four lores also', is indicative of a combination of other learned men with the men learned in the four lores, as **Pitâmaha** has prohibited one man (only) from declaring the law (in the following text) : "Therefore one alone although knowing the rules of laws, should never declare under the law." *Vargiṇaḥ* 'members of particular groups', such as, the *gaṇas* and the like. "The associations (*Gaṇas*), unions of heretics also, the *Vrâtâs*, and the *S'reṇis*, as also those others who are (members) of the combinations *Samûhas*, these are called the *Vargyas* ; so (says) Bṛhaspati," vide this Smṛti of **Kâtyâyana.** The mention of the name of Bṛhaspati is with the object of pointing out that this tradition about the *Gaṇas* etc. was well-known even before. The association of the arm bearers is (called) *Vrâta*·

"The bearers of several arms when associated together are called *Vrâtâs*" so, having been stated by the **Same Author**. *Kulâni*, families, *i. e.* the sagotras of the plaintiff and the defendant. *Kulikas*, 'of the families', some of the seniors among the *gotrajas* of the plaintiff and the defendant. 'The appointed' i. e. along with the Chief Judge, the three assessors. 'The King' i. e. along with the Brâḥmaṇas.

In this connection **Bṛhaspati**[1] : "Established or stationary, not established, under the (Royal)seal, and under the *S'âstras*, are stated to be the fourfold varieties of courts ; and the members of the *Sabhâs* are also of the same kinds." The court which is held at a place like a forest and the like is 'not stationary' or established (*Apratiṣhṭhitâ*). Generally not being possible to shift to other places, and in the case of inhabitants of both the places and the like, that being absent, it is stationary (*Pratiṣhṭhita*). In the case of the appointed councillors, moreover, being accompanied by the (Royal) signet, Law, and the President, it is *Mudritâ*, under the (Royal) seal. In the case of the King, however, being controlled by the *S'âstra* it is *S'âstritâ* (Under the Śâstra). This classification, however, has been pointed out by the **Same Author** : "The (permanently) established *Pratiṣhṭhita* (Court) is in a town ; in a village is a moving one called the unestablished *Apratiṣhṭhitâ*; the one with the Royal signet is joined with a President ; and that having the King is enjoined by the *S'âstras.*" 'The President', *i. e.* the Chief Judge, as he has been invested with the power of investigating legal proceedings. In his hand, moreover, should be given by the King his own signet for the production of the Defendant and others ; this is inferrable from this (fact itself). There the *Pratiṣhṭhitâ* and *Apratiṣhṭhitâ* Court should be caused by the disputants themselves desiring a decision by payment of money, showing respect and the like means, as under the injunction of the *S'âstra*, in the absence of an initiation by the King, there cannot be constituted a Court. The one under the (Royal) signet, and that under the *S'âstra* also are to be organised by the King himself in the exercise of his own authority. Therefore, there, those desiring a decision have to approach him alone, and not to constitute a Court (assembly). There, **Pitâmaha** states the superiority of the Court under the *S'âstra*, over other kinds of Courts : "The disputes which had gone to the first Court, whether in accordance with the law, or not in conformity to law, if these resort to

1 See Aparârka p. 600. Another reading is शासिता for शास्त्रिता ; सासिता is also another.

the King's Court, these refer to the former plaintiff." 'Former plaint', *i. e.* the (plaintiff's) first complaint. The use of the expression 'King's Court', is indicative, by an extended application, of superior Courts.

Since the **Same Author** says "What has been decided
5 PAGE 19* (by a Court) in a village should go to (the Court in) the town; while that decided by (the Court in) the town, (should go) to the King; when it has been decided by the King, whether a good or a bad decision, there is no revival of that." **Nârada** [1] also: "The *Kulas, S'reṇis, Pûgas*, an officer appointed (by the King)
10 and the King (himself), are established for deciding disputes; and among these, each succeeding is superior to the one preceding it in the order".

Thus in the **Smṛtichandrikâ** the rule about the **Deciding Authorities.**

Now the **Law Court—Swadharma-Sthânevasthânam.**

There **Kâtyâyana**: "That place is indeed called a Court of Justice,
15 where in accordance with a consideration (of the rules) of religion and law (*dharma-śâstra*) a discriminatory examination of the real point at issue has been authorised to be made". The place where, of the point at issue, *i. e.* the fact as set out in the complaint, a discriminatory examination of the reality, there the conclusion in accordance with the *Dharma* and *S'âstra*
20 by the deciding authorities is authorised, is set out, that place, is called the Court of Justice, by reason of its derivation from the fact that a discriminatory consideration according to the *Dharma S'âstra* is authorised. *Hi*, 'indeed', indicates that it is well known.

This Court of Justice, moreover, should be erected in the
25 Eastern direction. To that effect is **Śaṅkha**: "The Court of Justice should be in the Eastern direction; that, moreover, should be provided with fire and water". 'In the Eastern direction', *i. e.* from the King's palace. Hence also **Bṛhaspati**: "The king should erect a residential building in a fortress, having water and trees around (it); (and) on the
30 eatern side of it (*i. e.* of the house) should be located the Court-room, properly constituted and facing the east. Containing flowers, incense, seats, and provided with seeds, jewels, and containing the images, documents, and divinities also and likewise provided with fire and water".

The court room designed and constructed in this manner, one should
35 enter in the morning after offering oblations into the fire. So also **Manu** [2]: "Having got up in the last watch (of the night), having performed the

1 Intr. Verse 7. 2 Ch. VII. 145.

ablutions, with a concentrated mind having offered oblations into the fire, and after having worshipped Brâḥmaṇas, (the king) should indeed enter the hall of audience of auspicious signs." Here, in the expression (*Archya*) 'after having worshipped' although there is no compound, still the transformation of the gerundial termination into, *ya* is not faulty, on account of poetic license. The conclusion is that the king should enter. Hence also **Bṛhaspati:** "Having got up in the morning, a king after having performed the ablutions, with concentrated attention having properly worshipped with good flowers, ornaments and clothes, the elders, the astrologers, the scholars, the gods, the Brâḥmaṇas, the family priests, and after having paid obeisance to the teachers etc. should enter the hall of audience." Here the construction is that the king should enter. The plural number in the word 'family priests,' is expressive of the act only, as in the case of *pâśâs*[1] and not of plurality, as the family priest is one.

The king also should enter along with the Brâḥmaṇas and the like, to that effect also **Manu**[2]: "A king, desirous of investigating disputes should enter the hall of justice preserving a dignified demeanour along with the Brâḥmaṇas, and also accompanied by ministers versed in ministrations." Here the word *cha*, 'and also', is intended to indicate the chief judge, family priest, assessors, associations of trades people, accountant, scribe, the steward of justice, gold, *Dharmaśâstras* also, of these also, like the Brâḥmaṇa, there being a use in regard to the investigation. There the use of some has been pointed out in regard to the decision about the judges. Here the use of some (others) will hereafter be stated.

In regard to the entry into the hall of audience, **Saṁvarta** states a special rule: "Having offered salutations to the guardians of the quarters, and entered the spacious hall of audience, a king should give protection to the subjects by investigating causes." The locative case here is indicative of means. The meaning is that, by means of investigating causes, he should offer protection to the subjects. The use of it as a means may be observed

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1 पाशानितिवत्—See Pâṇini IV. II. 49. पाशादिभ्यो यः । The suffix य is added to indicate plural, collection e. g. पाश्या—a net *i. e.* a collection of ropes or nooses (पाशानां समूहः); so also तृण्या—heap of gross; hay-stack. धूम्या, वन्या, वात्या &c.

The meaning is that the plural in पुरोहितान् does not indicate plurality of persons, but plurality of actions or functions.

2 Ch. VIII. 1.

mediately by the detection of the offender, which is useful in the matter of the governance of the people.

In this manner having stated the seating of those who had entered the court room, which followed as of course, **Bṛhaspati** states the rule as to the quarters in regard to some: "With his face turned to the east should sit the king, the assessors with faces turned to the north, the accountant with his face towards the west, and the scribe with his face towards the south. Gold, fire, water, and indeed the Dharma-Śâstras also, the king should deposit in the middle of these, and religious merit, and also auspices." The seating of others, moreover, should be according to convenience; as there is no rule (in that behalf).

In this manner, an assembly made of the ten accompaniments, helpful in regard to disputes, such as the king and others, is like a sacrificial assembly; so says the **Same Author**: "The king, the duly appointed officer, the assessors also, the smṛtis, the accountant and the scribe, gold, fire, water, its own officer, these accessory means are indeed ten. The assembly in which, with this ten-limbed instrument, a king investigates law suits with a determined resolution, that assembly is comparable to a sacrifice." 'Duly appointed office', *i. e.*, the Chief judge. 'Its own officer,' *i.e.* the steward of the court.

The **Same Author** also states the duty of the accessory members: "Of these ten also, the function of each separately has been stated: The president is the speaker, the king is to issue orders, the assessors are the investigators of the cause, the smṛti declares the final decision, the success (of a party), the grant of relief, and the punishment also; for the purpose of the oath, the gold and fire, and for the thirsty and the agitated, the water; the accountant is to calculate the amount, and the scribe to write out the judgment and decision. The steward should do the bringing in of the opponent and the councillors, as also of the witnesses, and should always guard the plaintiff and the defendant (who may be) without a surety."

The expression 'the president is the speaker,' is intended as a rule *par excellence*, since **Vasiṣṭha** has stated that "Even the assessors and the others also knowing the law must necessarily speak." 'The king to issue orders,' this expression is also intended as applicable to (whomsoever has) the capacity for causing money (to be paid), punishment and fine to be inflicted, as the **same Author** has stated that "the punishment by means of a wordy reproof or by the expression 'fie' *dhik*, may be

administered by the Chief Judge even." Moreover, after stating that "the (person having) authority for giving a decision is the king, and a Brâḥmaṇa of versatile learning" it has been stated: "The (right for the) punishment or oral reproof, and by the expression *dhik*, also have been stated to be limited to the Brâḥmaṇa only, and the (right for) monetary punishment and the punishment by corporal infliction are both restricted to the king." Of the permanently established and the impermanent councillors, however, by reason of the absence of any particular command, there is no rule.

Having seated themselves at an auspicious place, after having given the decision merely, they may retire, as they have no authority either to award punishment or direct a money payment. In disputes about heinous crimes, however, they should not even give a decision. Hence says **Bṛhaspati**: "Those of the families, associations, guilds and the like, who have been duly invested by the king, these should investigate the causes of men, excepting the decisions about heinous offences."

The court invested with the (Royal) signet, however, is equal to the assembly of the Brâḥmaṇa; as says **Manu**[1]: "The place where sit down Brâḥmaṇas versed in the Vedas and three in number, and also the learned man appointed by the king, they regard that as the assembly of Brahman". 'Appointed' (*Prakṛto*) *i. e.* invested with authority, *i. e.* in short the Chief Judge.

Among the *sabhyas* also, those of the assessors who create in the plaintiff and others, satisfaction, such assessors become praiseworthy; so says **Vyâsa**: "The assessor who causes satisfaction to the plaintiff, the defendant, the assessors, the scribe, and the spectators also, with passages from religious

PAGE 21* literature, such an assessor attains praiseworthiness."

Similarly, the **Same Author** says that the assessor who removes away doubts from the disputants and others is their life-giver: "Of the men who carry on a dispute with each other through misapprehension, one who removes their doubt, that assessor has been declared to be a life-giver." *i. e.* one who wards off men from a mutual quarrel. **Vasiṣṭha** states the result to a life-giver: "That merit which accrues for lifting up a dying Brâḥmaṇa from a pool of water, the same is the merit for lifting up one from a dispute at law." The expression 'one dying' is also properly applicable to the person who is here the subject[2] of comparison.

1 Ch. VIII. 11.

2 दार्ष्टान्तिक—that which is the subject of an illustration *i. e.* the उपमेय, thus here the litigant.

Moreover, **Bṛhaspati** states the result to particular assessors : " Those who are immersed in the darkness of ignorance, and are shrouded under the veil of suspicion, one who renders these free from distemper with the pin [1] of the collyrium of knowledge, such a one obtains fame here, and also honour from the king, and a (lasting) place in heaven also. Casting off avarice, hatred, and the like, one who reaches the decision of the cause by (following) the rules laid down in the *S'âstra*, to such a one accrues the fruit of a sacrifice."

For those, moreover, who make a decision by transgressing the *S'âstric* commands **Kâtyâyana** states the sin (accruing) to these : " Where a decision has been given by the councillors (*Sabhyas*) by transgressing the rules of justice (*Nyâyaśâstra*), there justice (*Dharma*) being destroyed by injustice (*Adharma*) will destroy, (them) (and there is) no doubt." Similarly also a sin has been pointed out by the **Same Author** for not warding off a king intent on (doing) injustice : " The members sitting in court should not tolerate one who is set about (doing) an injustice ; those who tolerate, fall along with the king into the hell with faces turned downwards." Therefore he should not be followed by the members of the Court, so says the **Same Author** ! "Those members of the Court in such a case who follow him even though he proceeds unjustly, these even themselves become participators in it ; and therefore the King should be admonished by them by degrees." From the expression (*S'anaiḥ*) 'by degrees' a contradictory statement for fear of sin, may not be made at that very time but in course of time. Hence also has been stated by the **Same Author** : "Having come to know that the mind of the King has swerved from the path of Justice, at that time what is agreeable to him may be stated ; a councillor does not become a sinner on account of that." **Manu** [2] , however, states a sin for those councillors who do not make a protest against an unjust decision being given : " Where Justice is destroyed by injustice, or truth by falsehood, while the councillors are sitting in the Court and looking on, there the Councillors are (also) destroyed." 'While looking on,' in this, the genetive case is used to indicate disrespect [3] .

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1 ज्ञानाञ्जनशलाका—cp. अज्ञानांधस्य लोकस्य ज्ञानाञ्जनशलाकया । चक्षुरुन्मीलितं येन तस्मै पाणिनये नमः ॥ शिक्षा. 58.

2 Ch. VIII. 14.

3 अनादरे षष्ठी—Pâṇini II. 3. 38. For other uses of the Case see II.3. 39, 40 and 41.

Moreover, for a decision at law by disregarding some of the councillors, a sin has been pointed out by the **Same Author** [1] : " But where justice wounded by injustice, remains in a Court-assembly, and they do not extract the dart from it, there the Members of the Court also are wounded (by the dart). " The non-removal of the dart is determined also by the absence of the consent of all the councillors. So also **Nârada** [2] : " Where all the members of the judicial assembly opine ' this is right,' that decision becomes free from a dart ; otherwise, however, it has a dart in it." Therefore, for self-protection, justice must never be wounded ; so says **Manu** [3] : " Justice being violated, destroys justice ; being preserved, preserves ; therefore, justice must not be violated, lest violated justice destroy us." Moreover, for avoiding the degradation to the *Vṛshala's* [4] status, one should secure a non-violence to justice ; so says the **Same Author** [5] : " For indeed, divine justice is (said to be) the (sacred) bull (*Vṛsha*) ; one who causes obstruction to it, such a one the gods consider to be *Vṛshala* ; therefore, one should not violate justice." *Alam*, ' obstruction ' *i. e.* transgression. **Hârîta**, however, states a hell for a *Vṛshala* : "As a blind man eats a thorny fish, so does one who being in an assembly speaks in ignorance in distortion of the real fact."

PAGE 22* Here **Nârada** [6] :

"Therefore, a member of a judicial assembly, having entered the court, freeing himself from attachment or hatred, should so make a declaration that he may not fall into a hell." What kind of declaration (should it be) for the avoidence of a hell ? So says the **Same Author** : [7] " In proceedings correctly decided, the members of the court attain purification. Indeed, their innocence depends upon the justice of their decisions ; therefore one should declare justice alone." ' Their', *i. e.*, of the decisions. **Kâtyâyana** also : " A councillor must necessarily declare an opinion which is in consonance with *Dharma* (law) and *Artha* ; if the king do not listen, the councillor, however, becomes blameless on that account." ' In consonance with *Artha*,' *i. e.* containing the principles of the science of politics. **Manu** [8] also : " The king, however, becomes blameless, the councillor is freed, the sin accrues to the perpetrator, where one deserving of censure is censured. Either the court must not be entered, or the truth must be spoken ; a man who either speaks nothing, or speaks falsely,

1 Ch. VIII. 12. 2 Intr. III. 23. 3 Ch. VIII. 15.
4 वृषलत्व—Status of a Vṛshala or Śûdra. 5 Ch VIII. 16.
6 Intr. III. 15. 7 Intr. IV. 7. 8 Ch. VIII. 19, 13.

becomes sinful (guilty) ." As to what has been stated by **him**[1] : " One should speak the truth, one should say what is pleasing ; one should not utter a disagreeable truth," that has a reference to other than one giving a decision ; since it has been stated that in such a case without partiality, an unpleasant declaration may even be made.

In this way in spite of the rule as to immunity from any benefit or disadvantage, a councillor who under the influence of an intensive passion or the like, declares a decision of a dispute contrary to the Smṛti, Usage or Justice, for such a one **Nârada**[2] propounds a punishment : " Whether through passion, or through ignorance, or out of avarice, one who pronounces a perverse judgment, such a Councillor should be regarded as not a member of the Court ; and such a sinner, one (*i. e.* the king) should punish severely." **Kâtyâyana** also : " Through friendship, or through ignorance even, or through infatuity also, there the councillor is guilty of a false declaration ; such a councillor has been declared to be liable to be punished". 'Friendship ' *i. e.* attachment ; ' infatuity ' *i. e.* distorted knowledge.

Here, one declaring a false decision under the influence of passion, avarice, or through fear even, should be punished with an amount which, is double that of the fine (prescribed) for a defeat in the dispute ; so says **Yâjñavalkya**[3] : "Out of passion, avarice, or even through fear, councillors acting in departure from the rules of the Smṛts or from a similar cause, should each be separately punished with a fine double that in dispute." In a dispute, the punishment which accrues upon a defeat, the double of that should he be compelled to pay ; this interpretation which is according to the opinions of many commentators should be accepted ; and not, moreover, double the amount in dispute, as is the import of some commentator, as it would not be proper. The impropriety, moreover, has been explained by many commentators, and so is not stated here again through fear of prolixity.

In the same manner also should be punished those who give a false decision under the influence of infatuity ; so says **Kâtyâyana** : " After correctly understanding how to decide the cause, a councillor should thereafter declare the decision ; he should never declare a false decision. One who (so declares) becomes liable for a double fine."

Those, however, who declare a false decision through ignorance or anger, in the absence of a particular rule, the text of **Bṛhaspati** stated generally in

1 Ch. IV. 138. 2 Intr. I. 67. 3 Book II. 4.

regard to the councillors applies in such a case. "The Councillors who declare an unjust decision, similarly those who live upon bribes, as also those who commit a breach of trust, all these should be expelled." 'Those who live upon bribes,' has a reference to others than the councillors, as in the text of **Vishṇu**[1] : "Of false witnesses, the entire property shall be confiscated ; as also for councillors who live by bribes, (the punishment of) the confiscation of the entire property having been stated in regard to the Councillors."

As for what has been stated by some that for a false statement, under the text of **Manu**[2], "If, however, through ignorance, they are punishable with a thousand," a different punishment from two hundred etc. has been stated, that is intended to state that under the rule of **Yâjñavalkya** that a double punishment occurs only for (acting, through) passion, a different punishment is to be sought in case of ignorance etc., and not for demonstrating the punishment of two hundred or the like upon the strength of the text of **Manu**. In the text "They declare that the wise have prescribed these fines for perjury." **Manu**[3] having declared in the summing up that the text has a reference to offences by witnesses. Therefore the punishment under the text of **Bṛhaspati** in case of ignorance etc. should be taken as having a reference to councillors.

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The Chief Judge, or the councillors are to be punished even for having mere conversation in a secluded place with a claimant before (the declaration of) the decision ; so says **Kâtyâyana** : "If while a proceeding is yet undecided, a judge holds conversation in secret with a claimant, he becomes certainly punishable, and the councillors also ; and no doubt." The **Same Author** says that if a fault of a councillor is discovered after the decision, he is to be compelled to pay a fine : "Whatever loss has been suffered through the fault of a councillor, should be made good by the councillor at that time ; but one should not disturb the decision of the matter in dispute between the parties." The meaning is that one should not revoke a decision made even by a vitiated councillor ; but what loss has been suffered on account of the fault should be caused to be paid.

Nârada[4] states the faults in a councillor : "Those members of the court who, after having entered it, sit mute and meditative, and do not speak when the occasion arises, are liars all of them." 'When the occa-

1 Ch. V. 179–180. 2 See Ch. VIII. 121. 3 Ch. VIII. 122.
4 Intr. III. 11.

sion arises', *i. e.* a proper one. **Also:**[1] "That is not a judicial assembly where there are no elders; they are not elders who do not speak (according to) the law. That is not (according to) law, where there is no truth; that is not the truth which is vitiated by fraud."[2]

Thus in the **Smṛtichandrikâ, being seated at a Court of Law.**

Now the **Law regarding the Trial.**

There **Kâtyâyana:** "The king attired decently, after having gone to the assembly chamber, composed in mind, and standing or seated with his face turned towards the East, should investigate causes of the litigants along with the elders versed in the three lores, and also with ministers knowing the law." As it is impossible to function standing and seated both simultaneously, an option exists. Hence also **Manu**[3]: "There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, he should investigate the causes of the suitors." This option as to standing and sitting is intended as a prohibition against sleeping or moving round. The expression 'raising up the right arm,' is with a view to regulate that in an assembly of the Brâḥmaṇas, the (upper) covering cloth also should be put on as by the right.[4] To that effect also **Another Smṛti:** "In an assembly of the Brâḥmaṇas, however, one should raise up his right arm." The expression 'Having put on an unaustentatious dress and ornaments' is intended as a prohibition against arrogance. So also **Prajâpati:** "A king who has been duly anointed, or a Brâḥmaṇa who is well-versed, when seated on the seat of justice should investigate disputes unelated." 'Unelated' *i. e.* unarrogantly. The use of the word 'unelated' is also used as indicative of (absence of) jealousy. To that effect also **Nârada:**[5] "Therefore, having reached the seat of justice, devoid of (any feeling of) jealousy, he should be even towards all beings, following the vow of Vaivasvata". 'Vow of Vaivasvata' *i. e.* the rule followed by Yama[6]. That, moreover, has been pointed out by the **Same Author**[7]: "As Yama regulates at the proper time both the friend and the foe, in the same manner should the subjects be restrained by the king; this

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1 Intr. III. 18. 2 छल—any circumvention; deceit. 3 Ch. VIII. 2.

4 उपवीतवत्—after the manner of the sacred thread being put on by the right—(see सहवै नैत्तिरीयारण्यक) वासो वा दक्षिणत उपवीय दक्षिणं बाहुमुद्धरते सव्यमिति यज्ञोपवीत—

5 Intr. I. 34.

6 The God of righteousness who deals out evenhanded justice to all souls.

7 —Not found in the published edition.—

indeed is the vow of Yama." **Yâjñavalkya**[1] also: "Therefore, like Yama, the overlord after discarding likes and dislikes, should conduct himself after the manner of Yama, subduing anger and restraining the organs." The use of the word 'anger,' is indicative of 'avarice' also. For, the **Same Author**[2] also: "The king, divested of anger and avarice, should administer justice along with learned Brâḥmaṇas, in conformity with the principles of legal science." The expression 'in accordance with the principles of legal science' is intended to exclude the principles of politics, such as those prescribed by Uśanâḥ and others, and not however, for excluding the principles of politics in accordance with political science which is included in the science of legal principles, since says **Nârada:**[3] "Without detriment to the principles of legal science or the political science, a king should carry on the investigation of disputes attentively and skilfully."

The *Dharma S'âstras* have been pointed out by **Pitâmaha**: "The four *Vedas* with the *Aṅgas*, the *Mîmâṃsâ*, the *Smṛtis* likewise; these are the *Dharma S'âstras*; the *Purâṇa* and the *Nyâya* philosophy." The *S'mṛti* referred to here as a distinct source is the *Artha S'âstra i. e. Political Science*, where (the consideration of) Artha is given prominence. That, moreover, has been pointed out in **Bhaviṣhyat Purâṇa**: "The use or non-use of the six means according to the importance of the object, the utilisation of the means such as peace and the like others, either collectively or separately, the appointment of presiding officers, the uprooting of thorny objects; this smṛti has been called a *dṛṣhṭârthâ*-one having a visible purpose—by the sages, O elder brother of Garuḍa." This is merely an illustration of a *dṛṣhṭârtha Smṛti*. Thus the meaning is that the science of Polity which treats of peace, war, and the like topics, is a *Smṛti* with a visible purpose. This (rule of) following both the sciences, is only applicable where there is no mutual contradiction between the two. To that effect **Nârada**[4]: "Where the *Dharma S'âstra* and the *Artha S'âstra* are at variance, one should discard the dictates of *Artha S'âstra* and follow what is stated in the *Dharma S'âstra*." Hence where, by the declaration of the success of one, the securing of a friend occurs as stated in the *Artha S'âstra* (but) in opposition to the way of the Dharma, there, by discarding the securing of a friend, the success of the other party alone should be declared.

1 —Not found in the published edition.—

2 Book II. 1. 3 Intr. 37. 4 Intr. 39.

Where, moreover, there is a contradiction between two smṛtis, there states **Yâjñavalkya** :[1] "Where two smṛtis conflict, principles of equity as determined by popular usage shall prevail." The meaning is that where there is a conflict between two *smṛtis* which have *śruti* for their basis, (there) such a result should be obtained as would work an adjustment of the two on the strength of the rules of logic as to relevancy and non-relevancy as deduced from popular usage. In this manner, even when there is no conflict, such dictates of *śâstra* alone should be followed as are supported by the rules of justice ; so says **Bṛhaspati** : "By a sole reliance upon the *śâstra*, should not a decision be made ; for, a deliberation devoid of reasoning, leads to a frustration of *Dharma*." Hence, it comes to be stated in terms that one should decide by a resort to the import of the *śâstra* only, when supported by (rules of) logic. It has also been stated by **Gautama** :[2] "For arriving at a judicial decision, rules of logic are a means." 'For arriving at a judicial decision,' *i. e.* for arriving at a legal decision. So also **Another Smṛti** : "One who investigates by means of reasoning, such a one comes to know the *Dharma*, not any other." Therefore one should not decide all at once ; so says **Pitâmaha** : "Untruths plausibly appear like truths, while truths look like untruths, owing to circumstances creating suspicion ; therefore it is proper to make an investigation." **Nârada**[3] also : "The firmament has the appearance of a flat surface, and the fire-fly looks like fire ; yet there is no surface to the sky, nor fire in the fire-fly. Therefore it is proper to investigate a matter, even though it should have happened before one's own eyes. One who delivers his opinion after he[4] has investigated (the matter) will not violate justice. One[5] who has not committed theft, comes to be (declared) a thief, while a thief comes to be regarded as a non-thief ; although he had not committed (any) theft, *mâṇḍavya*[6] was found to be a thief at a trial.

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1 Book II. 21. 2 Dh. S. Ch. II. 23–24. 3 Intr. 72.

4 The original is परीक्ष्य ज्ञापयन्नर्थान् न धर्मात् परिहीयते Dr. Jolly's translation is "one who does not deliver his opinion till he has investigated the matter" etc.

5 This and the following verses are not to be found in Dr. Jolly's Edition. They are found in the Trivendrum edition of Nârada as Verse 36 on page 9, and Verse 35 on page 8.

6 *Mâṇḍavya* was wrongly dealt with as a thief. There are various versions of this episode in the several Purâṇas. According to the *Mârkaṇḍeya* (Ch. 16.) and the *Garuḍa* (I 142) he was impaled under a charge of theft. The *Padma Purâṇa* (141, 151) states that he was suspected of a horse theft. In the *Skanda Purâṇa* (V. 169–172) ornaments of a woman, and Kings wealth (VI. 167) are the subjects of theft. There is a well known Ṛshi of that name in the Vedic literature.

The divine *dharma* indeed is very subtle, difficult to be seen, difficult to be investigated ; hence the course of justice should be conducted by a visible path." 'Surface,' *i. e.* the earth's surface. 'At a trial', *i. e.* by the particular variety of a decision known as judicial investigation (*Vyavahâra*). 'A visible path' *i. e.* clear way. **Manu**[1] also: "As a hunter traces the lair of a (wounded) deer by the drops of blood, even so the king shall discover on which side the right lies, by inferences (from the facts) (44). By external signs let him discover the internal disposition of men, by their voice, colour, motions, aspect, eyes, and gestures also." **Yâjñavalkya**[2] also: "In the case of an assault for which there were no witnesses, the investigation should be carried on by means of marks, probabilities, popular report, and the like, for fear that the marks might have been counterfeited." The meaning is that in a case of an assault for which there exist no witnesses, one should not decide merely by signs like a wound or the like, because of the possibility of an artificial wound, but that the case should be investigated by regard to probabilities etc. So also **Nârada**[3] : "Some one might, by making a mark upon himself and through hatred, cause trouble to another ; in such a case, the investigation should be by a resort to reasoning, motive, the subject matter, and past relations (between the two)." 'Mark,' such as a seat or the like. 'Reasoning,' *i. e.* inference from circumstances. 'Motive,' logical inference. 'The subject,' *i. e.*, the cause, 'Relation,' *i. e.* context ; or previous quarrel. 'The investigation' *i. e.* with a view to decide the dispute in accordance with actual happenings. Hence also **Yâjñavalkya**:[4] "After discarding all circumvention, the king should decide disputes according to the actual facts ; for even a real claim (based on actual facts), if not properly presented is likely to be lost in a judicial proceeding." The meaning is that there being an absence of certainty about documentary and other evidence, the case set up by the plaintiff or the defendant, although (it may be) true according to actual facts, is lost in the trial ; and it is for this reason that he should pursue actual facts. **Nârada**[5] also: "The king having the means of justice, may indeed neglect incorrect statements if made ; he should pursue facts alone ; since prosperity is based on justice." 'Statements' (*Śishṭam*) *i. e.* declarations made by the plaintiff and the defendant. The meaning is that here one is not to pursue the rambling prattles of an individual, but that as far as may be possible one should pursue the real truth. When, however, it is

1 Ch. VIII. 44; 25. 2 Book II. 212. 3 Ch. I. 176.
4 Book II. 19. 5 Intr. 31.

not possible entirely to trace the actual facts, then by resort to circumvention even, a decision should certainly be made to depend upon witnesses and like other means of evidence. So also has been stated by the **Same Author**:[1] "Because it may be founded either on truth or on error, therefore it is said to have two results." By **Gautama**[2] also has it been stated: "In cases of dispute, the truth shall be established by means of witnesses." 'By means of witnesses' is intended by implication to include other means of proof. Hence also **Manu**[3]: "Every day, in accordance with the principles of local usages, and also the dictates of *S'âstra*, all (cases) which have been set out under the eighteen titles of law." *i. e.* the supplement is that the cases set out (under the titles) should one look into these, in the absence of the dictates of the *śâstra*, one should decide by means of local usages. To that effect also **Kâtyâyana**: "The decision of a king based on his own opinion (merely) where a text is available, leads away from heaven, threatens the ruin of the people, may bring on danger from the army of an enemy, and may reduce (long) life and virility. Therefore a king should decide cases in accordance with the rules prescribed in the *śâstra*; when, however, there is an absence of texts, he should carry out according to the local usage of all the people." 'Bring on danger from the army of the enemy' *i. e.* may create danger as emanating from an enemy's army. 'Texts' (*Vâkyam*) *i. e.* authoritative texts (*śâstram*).

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Of local usage also, the **Same Author** states the characteristics: "In a particular region, whatever rule has been in force for a long time, without being opposed to the *S'ruti* or the *Smṛti*, that is called the local usage (of the region)". That, moreover, should be caused to be incorporated in a book; so says the **Same Author**: "Whatever rule of adjustment has been settled in accordance with the agreement of the (people of the) region, should always be preserved in writing sealed with the royal signet; should be preserved with effort like *S'âstra*; and one should decide after a proper appreciation of the same." The expression 'the same' is intended to indicate the rule of an adjustment approved of a family and the like also. Hence also **Pitâmaha**: "Whatever the best practice, whether in accordance with law, or not according to law, that is declared to be usage by reason of its being practised by the families &c. and the country. Transactions between the inhabitants of a village, colony, town, guild, caravan, and an army should be

1 Intr. 20. 2 Dh. S. Ch. XIII. 1. 3 Ch. VIII. 3.

decided by regard to usage, so says Brhaspati." This has a reference to disputes mutually among the inhabitants of a village etc. In regard, however, to a dispute between these and others, a decision should be reached according to the dictates of the *S'âstra* alone. To that effect, moreover, the **Same Author**: "In the case of the inhabitants of a country, city, colony, town, or village, by their own conventions; (and) by regard to the *Dharma S'âstra*, in disputes of these with others."

Where, however, these means (of proof) do not exist, there the decision shall be according to the order of the King; so says the **Same Author**: "Where no document exists, nor possession, nor also witnesses, nor is also a resort to an ordeal possible, there the King is the authority". Those disputes of a doubtful character which cannot be determined, in the case of these, the King is the authority, since he is the master of all.

Here, moreover, **Hârîta**: "That decision which has been declared according to the dictates of the *Dharma S'âstra*, which is characterised by a conformity to the usage of the good men, and which, moreover, is uncontaminated by circumvention, such a one is a legal decision". 'Legal' (*Dhrâmikah*), *i.e.* not swerving from (*dharma*) legal principles.

For a King investigating in this manner, **Nârada**[1] states the fruit: "For a King who self-restrained, decides disputes according to law, seven good qualities become manifest, like the seven flames from fire". The meaning is that like the seven flames of fire, the seven good qualities arise.

The good qualities states the **Same Author**[2]: "Religious merit, worldly gain, fame, respect among men, favourableness, reverence on the part of his subjects, and an everlasting residence in paradise". 'Respect' *i. e.* esteem among men. 'Favourableness' (*Upagraha*)[3] *i. e.* a place of resort. "By restraining the sinners and by protecting the good, Kings are always purified, just as the twice-born (are) by sacrifices". **Yâjñavalkya**[4] also: "He, the King, who punishes the punishable properly, and executes those deserving capital punishment, shall be deemed to have performed many sacrifices consummated with rich gifts. Thus bearing in mind, equal to the sacrificial, separately should he personally attend to the judicial proceedings every day in the company of Councillors". 'Everyday'—this expression has a reference to days other than the fourteenth, and the like others. For to that effect **Saṁvarta**: "The fourteenth, the new Moon

1 Intr. 32.
2 Intr. 33.
3 Dr. Jolly translates as 'conquest'.
4 Âchâra 359, 360.

day, the Full Moon day, likewise the eighth—on these days one should never hold judicial investigations at all". On days other than these even before the midday only. To that effect **Bṛhaspati**: "In the forepart of the day, having taken his seat in it, accompanied by aged ministers and dependents, he (the King) should interpret the meaning of ancient Purâṇa, Dharmaśâstra, and listen likewise; and should carefully consider administrative matters, surrounded by three Councillors". 'In it', *i. e.* in the assembly room with the characteristics as described. In the forenoon also, after the four *ghaṭikâs* only: as that period is intended for the fire-sacrifices. Hence also **Kâtyâyana**: "That portion of three parts which occurs after the first eight parts of a day, such a period is considered to be the best in the *S'âstras* for judicial investigations". In this portion of three periods one should always investigate. So also **Pitâmaha**: "The writer, the accountant, the *S'âstra*, the Warden, the Councillors, gold, fire, and water, thus of eight parts is declared to be the means; by resorting to it, one should always inquire into a matter (in company) with the citizens". The use of the word citizens is intended as indicative of all people included in one's kingdom. To that effect also **Manu**[1]: "Being seated there, he shall give satisfaction to all the subjects (as approach him) and dismiss them", 'There', *i. e.* in the judicial assembly.

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In regard to the subjects also, one should not decide after himself creating disputes. To that effect also is **Pitâmaha**: "But he should not investigate after starting it himself or through his man". By the expression 'his man', the prohibition here is in regard to an affair started by a man under the orders of the king; and not for that started by any man. If it were so, there would a prohibition of matters started by a party or a person connected with him, and so the investigation itself of disputes would come to be prohibited. Hence also the man has been particularly characterised by **Manu**[2]: "Neither the King nor any servant of his shall themselves cause a lawsuit to be started". The supplement is, *i. e.* of men between whom there is no dispute. To that effect also **Nârada**: "But a King either under pressure or through greed for wealth, should never cause to be started suits by men between whom there was no dispute". 'Suits' *i. e.* disputes. So also, even a dispute although started by the subjects, but about which a complaint was not filed by the party or some one connected with him, but somehow having

1 Ch. VII. 146. 2 Ch. VIII. 43.

come to know, he should not admit. So says **Manu**[1] : "Nor should he swallow somehow that which has not been brought by some other persons." 'Not brought' *i. e.* not made the subject of a complaint. 'Anyhow,' *i. e.* out of prejudice or the like. Hence also **Pitâmaha** : "Not through prejudice, nor through avarice, nor through anger, should a king clutch at disputes not advanced by others ; nor also even of his own will". 'By others' *i. e.* by the complainants. Here the **Same Author** states an exception : "Circumventions, as also offences, and those matters likewise which are for the king (to investigate) ; these, however, a king should take up himself without a complainant".

There the **Same Author** details the (cases of) circumventions (*Chḷaldni*)[2] : "A way-layer, one threatening with the hand, one trespassing over a wall, the destroyer of a drinking fount, as also of a dwelling place ; the supplier of destructive weapons, and one who discloses the royal secrets ; one who unauthorisedly enters the harem, a dwelling house, a treasury-room, the kitchen, as also one who stares at a meal. One intent on throwing dung, urine, phlegm, and wind, or sitting on the hams in a fixed posture in the presence of the king ; one obstructing a front seat ; also one who enters putting on a dress far in excess of the king's ; one who enters by a wrong way, as also one who enters at a wrong time. Using the bed, the seat, and the sandals, seating oneself upon the bed and the seat, and when the king is sleeping nearby one who tarries about ; one who resorts to what is disliked by the king ; one taking a seat without being offered, as also one who puts on clothes, ornaments, and gold also. Taking by oneself, one who takes a beetle and

1 Ch. VIII. 43 (2). न चाप्रापितमन्येन प्रसेतार्थं कथंचन—Medhâtithi gives two interpretations of प्रसेत. (1) निगिरेत्—swallow *i. e.* hush up, or as he puts it, न उपेक्षेत. (2) Should not accept money other than that under dispute; cp also Kâtyâyana cited in Vyavahâra Mâdhava and in the Commentary of Râghavânanda. Medhâtithi states an exception viz. a theft or a similar act affecting the public. In the मनुस्मृति the reading is न च प्रापितमन्येन and all the Commentators have followed this reading. The Author of the Smṛtichandrikâ, however, reads अप्रापित. According to the above readings it would mean that complaints lodged by others should not be pushed up. The reading in the Smṛtichandrikâ would mean that unless "complaint is made, a king should not clutch at a dispute". Here the literal meaning in the *Dhâtupâtha* (प्रस ग्रहणे) would be appropriate. The text of Pitâmaha cited further on has the same sense.

2 छलानि—This word छल is used in legal treatises in several senses. Pre-eminently, it is used to indicate 'error, fraud, or circumvention'. See Nârada Intr. I. 31, also Yâjñ. II. 19. Here, it appears to be used in the sense of offences within the special originating jurisdiction of the King. 'Excesses'.

eats it. One who speaks without being authorised, as also one who makes complaints against the king. One putting on one cloth, likewise one who has not eaten, one who has tattooed his body in various colours, as also one who wears a garland, and one who blows
5 PAGE 28* out the upper garment. One who enshrouds his head; one who is intent on picking out holes. One who is intensively attached, one whose hair are loose; also one who pulls out the ears and the eyes; as also one who grinds his teeth, who cleans the ears and the nose—these fifty kinds of actions in the presence of the king are
10 regarded as circumventions (*Chhalâni*)" Sleeping in the bed of a king, as also seating on his seat, putting on his sandals, are the three excesses. 'Of clothes and ornaments also &c.' *i. e.* one who takes (these) without being given. The twice mention of the expression 'With hairs loose', is intended to include a barber also. The rest is clear in meaning.

15 **Nârada**[1] states the offences: "The (habitual) transgressors of commands, murder of a woman, mixture of the *varṇas*, intercourse with another's wife, theft, pregnancy also without a husband, abuse, speech which should be avoided, assault also, causing abortion of a phœtus. These ten (kinds of offences) also." The suggestion is that these the king
20 should investigate even without any complainant. Likewise also **Saṃvarta**: "Arrest, obstruction in the way, and where there is pregnancy without a husband, by himself should the king investigate, even without a complainant. Of one who has visible immense wealth, but the source is not visible anywhere, the king himself should investigate, even without a com-
25 plainant. Interrupting a meeting, cutting up of trees, destruction of crops also, the king should himself investigate even without a complainant. A maiden-lifter, a sinner degraded brâhmaṇa engaging in other's property disputes, the king should himself try. In the matter of the tax consisting of the one-sixth, that which cuts open a path, apprehension of
30 theft from one's kingdom, violation of other's wives, the destroyer of cows and brâhmaṇas, as also that which is destructive of the crops—these ten (kinds of) offences, the king himself should investigate." The meaning is, that there *i. e.* in arrest etc. the ten (kinds of) offences, the king should investigate *suo motu*. Here, the use of the expression 'obstruction in the
35 way' is intended as indicative of subventions; of the inclusion of those enumerated in the ten (kinds of) offences, is intended as indicative of those. The expression 'destructive of crops,' however is indicative of topics.

1 Not found in the published edition of Nârada.

All these heads, moreover, have been pointed out by **Pitâmaha**: "The eradicator, the crop-destroyer likewise, the incendiary also, the violator of a maiden, one who conceals a deposit; one who breaks up the thorns upon an embankment, as also one who trespasses upon a field; the destroyer of a pleasure-garden, likewise the poisoner, one inciting hatred against the king, likewise one who breaks open his seal, as also one who divulges his secrets, and one who sets free a prisoner; one who accepts possession and fine, a donation, and also an increase, one who conceals the drum proclamation, ownerless property, as also property appropriated by the king; as also what brings about the destruction of a limb; these twenty-two topics, the learned declare as cognizable by the king." In this manner, acts of circumvention and the like, should be investigated by the king after having come to know of these directly or through an informer (स्तोभक *stobhaka*), or an intelligence officer (सूचक *Sûchaka*). It should thus be understood that in regard to other topics, after having cognition of these from the litigants or persons connected with them, and not otherwise.

Kâtyâyana[1] states the characteristics of a *Stobhaka* (private informer), and a *Sûchaka* (Intelligence officer): "One who with the sole motive for gain, and instigated by lucre, first gives information of what is censured by the *S'âstra*, such a one is called a *Stobhaka*. One who has been appointed by the king himself for detecting the faults of others, and who after coming to know, reports to the king, such a one is called the *Sûchaka*: 'With the sole motive for gain' (*Arthamukhyaḥ*) *i. e.* who is prominently intent on making money.

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In this connection **Hârîta**: "After knowing the *S'âstras*, the laws of the *Varṇas*, as also of the common people his subjects, and also the characteristics of *Vyavahâra*, the king should act according to all that". The *Prakṛtis*[2] —the common people have been pointed out by **Pitâmaha**:

1 M. M. Kane in his compilation of *Kâtyâyana* reads राज्ञा प्रचोदितः (P. 8) and translates '*without* being urged by the King'. This reading is not given either in the Mysore edition, or in 'Collections'.

2 प्रकृति—This word is used in various senses in the Sanskrit literature, प्रकृतिर्गुणसाम्ये स्यादमात्यादिस्वभावयोः। योनौ लिङ्गे पौरवर्गे" (मेदिनी) In the present case it is used to indicate citizens outside the three varṇas, as has been made clear by *Pitâmaha* in his text quoted above. प्रकृष्टा कृतिः कार्यं यस्याः, प्रकरोतीति वा॥ The term *proletariat* comes very near the idea underlying this word प्रकृति characterised by *Pitâmaha* as वर्णानामाश्रमाणां च सर्वदा तु बहिः स्थिताः। The word *proletariat* has been pointed in dictionaries as a term used by modern Socialists and Communists for the whole body of wage-earning workers regarded as exploited by capitalist employers and the 'bourgeoisie'. The word also is used in the sense of basic varieties. सप्त प्रकृतयः See Yâjñ. Âchâra 353,

"The washerman[1], the hyde-maker, an actor, the basket-maker also, a fisherman should also be noticed, the *Mlechhas* and the Bhillas likewise also, the weavers[2] (a), the *Sthiravas* (b), the hunters (c), The *Hastas* (d), The *Lâkṣhadrus* (e), the *Ghaṭṭikas* (f), the *Kosedikas* (g), the *Âbhîrapadas* (h), The *Mâtaṅgas* (i), the *Aṇḍopas* (j), and the *Gopakas* (k). These eighteen are the *prakṛtis* (प्रकृतयः) declared by the wise; but they are always placed outside the *Varṇas* and the *Áśramas* (orders)."

The Characteristics[3] of *Vyavahâra*, moreover, have already been described in the first Chapter. **Manu**[4] also: "After having properly examined the caste rules, laws of the people of the country, of guilds and family customs also, and the fixed laws, one should settle the peculiar laws of each". 'Rules of the guilds', *i. e.* of the grocers, artisans &c. in their own respective groups; such as, 'this to be sold on this day', 'this to be sold by this guild only', and the like. 'In this family, on the fifth day, or in the fifth year (the ceremony of) the piercing of the ear should be performed', such and like others are the family customs. 'Should settle' *i. e.* should propound. And one not performing in non-distress should be compelled by force to perform. To that effect also **Yâjñavalkya**[5]: "The families, the people[6] also, the *S'reṇis*, and *Gaṇas*, and *Jânapadas* also, when deviating from their laws, the King should chastise (them), and establish them in the right path".

Nârada[7]: "Placing before him the *Dharmaśâstra*, and adhering to the opinion of the Chief Judge, he should decide suits in proper order with a calm and concentrated attention". 'In proper order', *i. e.* the meaning is, in the order of hearing the statement of the plaintiff and the like. To that effect also the **Same Author**[8]: "The statement of the cases should be first attended to; the title of the law after that; the deliberation and the decision also; thus investigation should be of four

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1 रजकः The Mitâkṣharâ interprets this term as वस्त्राणां रञ्जकः, the dyer.

2 Many of the names stated in this verse are not found in the reference books.

(*a*) वेमर—The weaver from वेमन् a loom (वेमा वापदण्डः Amara II. 10. 28.); (*b*) स्थिरवः (*c*) व्याधः (*d*) हस्त—हस्तः करे करिकरे सप्रकोष्ठकरेऽपि च : कक्षे केशात्परो ह्रासे । मेदिनी (*e*) लाक्षद्रुः (*f*) घाट्टिकः (*g*) कोसेदिक कुसीदिकः -(कुसीद) A usurer. (*h*) आभीरपद—आभीर, (अहीर) (*i*) मातंग— the lowest of the depressed classes. (*j*) अंडोप. (*k*) गोपक.

3 व्यवहारस्वरूपं—in the texts of *Hârîta* &c. (see pages 2–3 above).

4 Ch. VIII. 43. 5 Âchâra 361.

6 प्रकृतीः In the Yâjñavalkya Smṛti, the reading is जातीः 'Castes'.

7 Intr. I. 35. 8 Intr. I. 36.

parts". *Âgama* [1] , the hearing of the statement of the plaintiff ; that should be done first ; then that should be placed under a title of law, such as recovery of debt or the like ; then the consideration of the evidence in support of the plaint and the answer ; thereafter the determination of the success *i. e.* the result ; thus has been expounded in the Commentary thereon. There **Manu** [2] : "A King who desires his own welfare, must always forgive litigants, infants, aged and sickmen, who inweigh against him. He who, tolerates when abused by persons in affliction, will by reason of that be exalted in heaven ; he, however, out of (the pride of) his exalted position does not forbear, goes to hell on that account."

Thus in the **Smṛtichandrikâ the Rules of Investigations.**

Now the **Law of Arrest.**

There **Nârada** [3] : "One who does not attend a cause which is to be tried, and who disregards his statement, the plaintiff in a cause may place such a one under arrest until legal summons
PAGE 30* is issued. Even in (a case involving) a doubtful point, one who desires a decision of a dispute may put under restraint under the king's order one who is indifferent for a decision and disregards the challenge of the plaintiff that he should proceed for a decision, until the time of the summons in the suit.

The arrest, moreover, is of four kinds ; so says the **Same Author** [4] : "Confinement to a place, arrest for a limited time, restrictions regarding travelling, and prohibition against specific acts likewise ; this is the fourfold division of arrest ; one subjected to an arrest must not transgress it". 'Confinement to a place', *i. e.* restraining with an injunction that one should not move away from a house, temple, or the like place. 'Arrest for a limited time', *e. g.* 'You should show yourself before the fifth ; if not, you will have transgressed the King's Commands,' in this or the like form. 'Restrictions regarding travelling', *i. e.* prohibiting a journey. 'Prohibition against specific acts', such as spreading out a merchandise ; not, however for looking at it. As says **Kâtyâyana** : "One, however, who by restraining the organs by causing obstruction to speech,

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1 In the commentary on Nârada, *Âgama* has been explained as 'connection' *i. e.* the relation of the case in hand to the entire system of law. (See S. B. E. XXXIII p. 14. note on 36).

2 Ch. VIII. 312, 313.

3 Intr. Ch. I. 47

4 Intr. Ch. I. 48.

breathing, and the like to one who does not[1] deserve to be restrained, such a one should be punished, but not the transgressor". The meaning is that as restraining the organs would be difficult, one does not incur the charge of transgressing the king's command. Hence also there is no fault in regard to crossing a river or upon a like difficulty; so says **Nârada**:[2] "One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest." 'Crossing a river' is river-crossing; 'forest,' an impassable road; a country of the wicked, thieves, tigers and the like is 'a bad country.' 'A calamity' *i. e.* being surrounded by an enemy's army or the like. Under these and similar circumstances, a transgression of an order even is no offence. Elsewhere, however, **Pitâmaha** states an offence: "One by whom a king's command has been transgressed, and in particular when it can be performed, by such a one happens to be committed treason against the Government with its[3] seven departments." Where, however, there is an offence of the transgression of a command, there **Vyâsa**[4] states a punishment: "One who deserves an arrest, incurs punishment upon a transgression." **Nârada**[5] also: "If one arrested at a proper time breaks his arrest, he shall be punished. One who arrests improperly is liable to be punished." Arresting improperly, *i. e.* the meaning is, arresting one who ought not to be arrested. To that effect also **Vyâsa**: "One, however, who arrests those who ought not to be arrested, should be punished by the king; this is the established rule".

Kâtyâyana states those who ought not to be arrested: "Those who have climbed up trees and mountains, those who are seated on elephants, horses, chariots, or boats, those who are placed in difficulties, all these must not be arrested by those desiring to establish their claim. Those afflicted with a disease, and those who are under a calamity, and likewise those who are engaged in offering a sacrifice; as also those who have not come out of a proceeding must not be arrested, and the intoxicated, the lunatics, and the idiots likewise also. Not an agriculturist at the sowing season, nor an armyman at the conscription time; as also one who has gone out after taking a vow, nor one who is under a time-stipulation, in the interval.

1 अनासेध्यं is a better reading. स्वाम्यमात्या जनो दुर्गं कोशो दण्डस्तथैव च । मित्राण्येता प्रकृतयो राज्यं सप्ताङ्गमुच्यते ॥ 2 Intr. I. 49.

3 सप्तांगं राज्यं See Yâjñ. Âchâra 353.

4 This same text occurs in Kâtyâyana also. 5 Intr. I. 51.

An agriculturist when ready to reap the crop, on the approach of the rainy season likewise, from the commencement to the collection, during that period one must not proceed against". The import is as that the period is not proper for an arrest. **Bṛhaspati** also: "One who has made preparations for a marriage, the sick, one afflicted with pain, a lunatic, an infant, the intoxicated, the aged, one who is already under a charge, one ready for the king's service, and one under a vow. When a

PAGE 31* conflict is imminent, an armyman; or a husbandman when engaged in collection, as also those placed in a difficulty, must not be arrested, and a woman with a husband likewise". 'Conflict' *i. e.* a battle; **Nârada**[1] also: "One desirous of marriage, one oppressed by a disease, one about to offer a sacrifice, one immersed in difficulty; likewise one who is (already) accused by another, as also one ready for the king's service; cowherds at the cattle path, cultivators at the commencement of the crop season, artisans also for that period, the armbearers also during the war; one who has not reached (the age of) capacity, the messenger, one who is about to make a donation, one under a vow, as also those immersed in difficulty, must not be arrested; nor must the king summon these". 'Desirous of marriage', *i. e.* about to marry; 'the cattle path', *i. e.* the forest border; one who has not reached (the age of) capacity' *i. e.* who has not completed his sixteenth year; 'immersed in difficulty' *i. e.* those deprived of everything by thieves and the like. **Vyâsa** also: "The diseased, one about to offer a sacrifice, a lunatic, one desirous of (performing) a religious duty, one under a difficulty, one under a vow, one about to make a donation, must not be proceeded against, nor arrested, nor must (the king) summon him". Here **Bṛhaspati**: "A tradesman after he has sold off his merchandise; after the crop is produced, the husbandman; as also those prepared for a sacrifice, should be compelled to pay after they have accomplished their purpose".

Thus in the **Smṛtichandrikâ** the **Law of Arrest.**

Now the **commencement of the Trial.**

There **Manu**[2]: "After having placed himself on the seat of justice, with his body duly covered, and with concentrated attention, having bowed to the guardian[3] deities of the regions."; the substance is that at a

1 Intr. I. 52, 53, 54. 2 Ch. VII. 23.

3 लोकपालाः—*commencing with India and the rest these are eight.*

time prescribed in the *S'âstra*. To that effect also **Kâtyâyana**: "At the (proper) time, he should thus inquire of the applicant standing suppliant before him; what is your suit for, and what is your grievance? Do not have fear; speak, O man." 'What is your suit for?' this question is with the object of knowing what is not rendered which ought to be rendered. 'What is your grievance?,' this (question) is in the case of an injury. Likewise, with a view to a knowledge of the actor, the place, the time, and the reason of these two, four questions should be asked by the head of the court; so says the **same Author**: "By whom, where, when, and for what (reason)? thus should he ask one who has resorted to the court." Thus when asked, the suitor should, thereafter, submit to him the entire statement. So also **Yâjñavalkya**[1]: "If one injured by others in a way which is a violation of (the laws of) the *Smṛtis* and usage, informs the king, that becomes a (fit) subject for a judicial proceeding (*Vyavahâra*)." By this has been stated in substance that the plaintiff should report the injury caused by another. The word *Chet* 'if', here is intended to indicate that the information should be laid only by the volition of the informant, and not, however, by the king's command. The plural number in the expression 'by others,' is intended as indicative of an extension. Hence also has been indicated by Kâtyâyana the question about the perpetrator of the injury by the expression 'by whom' in the singular number. The word 'injured' is intended for the name of the person entitled to lodge the information, and not however, of the perpetrator. "Whether appointed by the plaintiff, or deputed by the defendant, one on whose behalf he carries on the dispute, the victory or defeat accrues to these two" in this text the right of taking part in a trial having been stated by **Kâtyâyana** in favour of an appointed agent also, the word appointed agent is used as indicative by implication of these also. Hence also **Pitâmaha**: "The father, the brother, a relative, a kindred, or even one having a connection, if these make an appearance, in such a case the trial may be started. Whatever is caused to be done through appointment by whomsoever, that must be regarded as done by himself also; that has been declared in the Smṛtis as unreviewable." In this way, moreover, it should be construed that the lodging of a complaint should be done by the plaintiff or by some person of his (on his behalf), and not by any other. Hence also **Nârada**:[2] "He, who not being either the brother, the father, or the son, nor one acting under an order or authority of another, speaks for him, shall deserve punishment, when

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making false statements in judicial proceedings." **Kâtyâyana** also: "Slaves, servants, pupils appointed persons, and *bândhavas* likewise, of the plaintiff shall not be liable to punishment; one, however, who is any other than these shall deserve punishment."

Thus, even the person lodging the complaint, when speaking unmannerly, shall be punished; so says **Uśanâḥ**: "Carrying a weapon and without an upper garment, with hair loosened, equipped with the means, and speaking with the left hand, wearing a garland, shall incur punishment." The import is that therefore never should one in such a condition address.

Thereafter, his statement, the writer should write down on the board or the like. To that effect also **Nârada**[1]: "When, angered by passion[2] or the like, he utters something in the evidence, all that (statement) of the plaintiff, he should at once[3] write down on a board or the like". 'In the evidence', *i. e.* in the presence of the king or the like. That statement, if it be not unworthy of consideration; as e. g. 'Money was advanced by me in another birth, and he is not returning that, or such like, then for bringing over the defendant, the sending of a sealed packet or the like should be directed. To that effect also **Kâtyâyana**: "Thus interrogated, what he speaks (as his grievance), he (*i. e.* the king) should consider along with the Councillors and the Brâhmaṇas; and if the complaint be proper or according to law, (an order bearing) the seal, should be given to him, or a messenger be ordered". 'To him', *i. e.* to the informant; 'messenger', *i. e.* the *Sâdhyapâla*[4]; 'according to law', *i. e.* in a proper form; the meaning is that (it is) sufficient for issuing a summons to the person complained against. To that effect also **Bṛhaspati**: "One against whom a person makes an accusation on facts or on suspicion, such a one alone should the King cause to be brought, either by (sending) a sealed order, or a messenger". The import is that such a one alone has the right to give a reply. Hence also **Kâtyâyana**: "The right is of one who has been complained against, and not of any other unconnected". The

1 Intr. I. 18.

2 *Asahâya* adds an interesting note. When a litigant under the influence of passion &c. blurts out something which happens to be a very important piece of evidence, he should say 'amen' (*Om*), and put it down in his note.

3 ओमिति वदन्—saying 'alright', 'amen'; cp. ओमित्युच्यतामात्याः Mâlatîmâdhava VI.

4 This word has been explained before by a quotation from *Vyâsa* (See. p. 30. ll. 1–4).

meaning is that, for 'any other', not complained against in that dispute, by reason of an absence of connection, there is no right of giving a reply. Hence, for any other there is no right of joining as an opponent ; but for himself (only) ; but by the person complained against taking up the (task of) giving a reply or by the Chief Judge making it out for facilitating his own function, or by the disputant of his own will accepting him as a respondent and not otherwise ; so says the **Same Author** : "Or even a stranger is permitted, if he is put forward by the person complained against; a stranger who has been offered by the disputant to the Court Officer, such a one may be regarded as a respondent ; as also one who has been admitted by the plaintiff himself". The meaning is this : Even a stranger, *i. e.* one unconnected with the dispute, (but) deputed to oppose, and is authorised as a defendant by the person complained against, is regarded as a (proper) respondent by Manu and the rest. Likewise, another, a second (variety of) respondent should be regarded as one, who (though) a stranger, *i. e.* not connected with the matter in dispute, had been deputed to the Chief Judge by the person complained against, or one who has been admitted *i. e.* accepted as opponent by the plaintiff.

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Moreover, this right of an unauthorised person to act as opponent should be understood to be in the case of persons who are incapacitated by a disease or the like, in such a case the person who has the right not being competent to plead in person himself. Hence also **Bṛhaspati** : "For the immature, the idiot, the lunatic, the aged, a woman, an infant, one afflicted with a disease, a kindred may declare the plaint, or any other person duly appointed". Hence also, a prohibition for a summons against these has been stated in the Smṛtis by **Hârîta** and others : "The King should not cause to be summoned a person who is unable, a minor, the old, one placed in difficulty, one engaged in (religious) dûties ; nor a person who would suffer a great loss if he were summoned, a person afflicted with pain, a person engrossed in the king's service, or in celebrating festivals ; the intoxicated, persons possessed by evil spirits, the idiots or the insane, the aggrieved, or persons who are dependents". 'Unable', *i. e.* afflicted with a disease; 'placed in difficulty' *i.e.* against whom a calamity has arisen; 'Engaged in duties', *i. e.* who is engrossed in the performance of the ordinary and special duties; one whose coming would cause a great loss is 'one who would suffer great loss' ; pain is the sorrow caused by the separation from a friend; one who has that is 'one afflicted with pain'; 'the intoxicated',

one whose intellect has fallen on account of *dhattûra* or a like intoxicating drug; *unmatta*, a person troubled by evil spirits, billiousness or the like cause; 'insane', *i. e.* inattentive in all matters; 'afflicted with pain', caused by poison etc. The use of the word dependent is indicative by implication, also of women who are not independent. Hence also **Kâtyâyana**: "The king must not summon persons who are intent upon a religious performance for prosperity, the diseased, and also the idiots, those not at ease, the intoxicated, the lunatics, those suffering from pain, and the women." Here, the women contemplated are those who are dependent upon others. Since says the **Same Author**: "Not a young and debased woman nor one born in a family, a woman recently delivered, a maiden of the highest of all the *varṇas*; these are declared to be dependents on their castes. A summons is allowed against women upon whom their families are dependent, profligate women, as also those who are prostitutes, those who are of a low family, as also those who have become degraded." 'Debased,' *i. e.* overpowered by passion; 'young,' is qualitative of the same also; 'born in a family,' *i. e.* born in a high family; of the highest of *varṇas*,' *i. e.* of a *varṇa* higher than that of the plaintiff; 'those,' *i. e.* those mentioned before; these five, dependent on their caste are under their lead, not others. Therefore, the meaning is that the summoning of those women upon whom their families are dependent is permitted by Manu and the rest.

Nârada[1] also prohibits the summoning of some: "One about to marry, one oppressed by a disease, one about to offer a sacrifice, one afflicted by a calamity, as also one (already) accused by another, and one engaged in the king's service; cowherds engaged in tending cattle, cultivators in the act of sowing the crops, artisans also during the time, and armbearers also during battle. Also one who has not yet reached the age of discretion, a messenger, one about to make donations, one (who is engaged) under a vow; those also who are placed in difficulty—must not be arrested, nor should the king issue a summons to them.' 'About to marry,' *i. e.* just prepared for marriage. **Vyâsa** also: "One diseased, about to offer a sacrifice, the intoxicated, one intent on a religious performance, one placed in difficulty, one observing a vow, one about to make donations, must not be accused, nor be placed under arrest, nor should the king summon him." Therefore, it is established that the rule regarding a

1 Intr. I. 52–54.

deputy is in the case of those only who are under an incapacity and the like.

When, however, no result can be obtained from a representative deputed by the incapax or the like, then a summons should be issued against the incapax also. To that effect also **Hârîta**: "Taking into consideration the time and the place, as also the importance or otherwise of the cause, the king may cause even the incapax etc. to be summoned, and brought comfortably by stages."

When, however, the accusation is in regard to a serious matter, then a summons is necessary against the accused himself only; as in such a case a deputy has not been permitted. For **Kâtyâyana** also: "In the case of a Brâhmicide, *surâ*-drinking, theft, adultery with the preceptor's wife, and other *asabhya*[1] disputes a representative cannot be offered. The **Same Author** also states the *asabhya* causes: "In manslaughter, theft, outraging another's wife, eating the uneatable, abduction and violation of a maiden, violence, counterfeiting, treason against the king likewise, a deputy (or a) representative cannot be admitted for a Complainant or the Respondent also." A deputy of the complainant or of the Respondent is the 'Representative.' Such a one must not be admitted in serious matters, such as these and the like others. Hence also **Hârîta**: "Even after having come to know of the accusation, those who resort to the forest, such as the hermit and the like, even these the king should summon in serious causes, (but) without creating anger." Here by stating 'without creating anger,' the Author intends to convey that in the case of ordinary persons, a summons may be made even with sharp words. Moreover, this has been made clear by **Vyâsa**: "One who causes injury, or does not profer, through dishonesty what is due to be given to one making a demand; such a one must be dragged under the king's order." One, however, who does not come up even by the King's order, for such a one **Bṛhaspati** states the punishment: "One, however, who when summoned, does not come up, out of pride relying upon the strength of his kindred, for such a one a penalty should be prescribed proportionate to the accusation". **Kâtyâyana** also: "One,

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1 असभ्यवादेषु; another reading is अतिपापेषु. (Kane p. 15). The counts enumerated here are regarded as *Mahâpâtakas*. See Yâjñ. III. 227. The reading in अपरार्क is असह्यवादेषु, and व्य. मा. असद्वचवादेषु. The स्मृतिचंद्रिका maintains the reading असभ्यवाद as will be seen in the next line. From the enumeration of these as given in the next line, असभ्य evidently is meant to indicate those causes which cannot wait for an assembly, not fit for an assembly of the सभ्यs.

who when summoned being able treats with contumely the King's Command, for such a one the king should administer a punishment according to the procedure observed in the rules; in a petty matter fifty, for one of a middling quality, two hundred and more, and in heavy cases five hundred and more". The quantity here is of *Paṇas*, as the **Same Author** has stated: "Whatever penalty has been deliberately fixed for a particular offence, its equivalent should be taken in *paṇas* should be understood from what will be stated further on." By the use of the expression 'being able', (it is intended) that in the case of adversity etc. no penalty should be administered. But after it has passed off, a fresh summons (should be issued). Hence also **Vyâsa**: "When a country is infested by a foreign army, or is in a (state of) famine, or when it is troubled by disease, one should issue a fresh summons; one must not administer a penalty". **Hârîta** also: "If one who is accused, has in reality a king's (commission) or divine (duty) to perform, and he goes to his place, or an interior place, for so doing, however, he does not incur blame". 'In reality', *i. e.* as a positive fact. If it be not in reality, then he should be punished and afterwards compelled to proceed with the trial. To that effect also the **Same Author**: "He should, however, be duly placed by effort; otherwise he will incur penalty; and after having punished, thereafter again he should be compelled to proceed before the king's justices".

In this manner, by whichever means whatsoever produced, the accused person should be placed in front of the complainant in the presence of the court or any other desired place. To that effect **Pitâmaha**: "The respondent then should be placed before the court by the plaintiff, at the contemplated or any other place; otherwise he is not reliable." The meaning is that he should be placed at such a spot where the concealment of the offending marks would be impossible. Thereafter when questioned by the king the accused should narrate the facts as are favourable to him, as a guest for a fact is not possible from the mere information of the complainant. Hence also in the rule as to the quest after facts has been stated by **Manu** [1]: "By their voice, (their) colour, (their) motions, their aspect, their eyes, and their speech also," in a dispute involving (an element of) deceit also, before the statement of the first informant is taken down in writing, for the purpose of the (correct) appreciation of the informant about the fraud,

1 Ch. VIII. 25.

the case of the accused should be ascertained from his mouth. After it is determined that the dispute of both involves deceit, the trial should proceed on the basis of deceit. Therefore it should be borne in mind that the statement of facts from the accused also must be taken.

After having determined the existence of deceit between the disputants, says **Yâjñavalkya**[1]: "From both a security should be taken, (such a one) who would be competent to satisfy the object of the judgment." The securing without much effort of the decreed amount and monetary penalty is the satisfaction of the object of the judgment. The meaning is that a security competent to do that should be taken by the deciding authorities from both the plaintiff and the defendant also. Here **Kâtyâyana** mentions those who are to be exempted: "Not the master, nor indeed an enemy, likewise one authorised by the master, nor one under an arrest, nor one against whom a punishment has been passed, never those who are under suspicion; nor indeed a sharer in a family, nor also the destitute, nor even apprentice students, or one commissioned on the king's business, as also those men who have become ascetics; nor one who is unable to pay to the creditor nor the penalty to the king of an equal amount, nor one who is not well known, should be accepted for the obligation of a surety." 'Under a suspicion,' *i. e.* under an accusation; 'apprentice students,' *i. e.* a perpetual student; 'of an equal amount,' *i. e.* equal to the amount in dispute; this is intended as inclusive of the prescribed penalty.

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If a disputant is not able to offer a surety proper for the matter in dispute, then also has been stated by the **Same Author**: "If, however, a disputant in a proper case has no surety, such a one should be kept under a guard at the end of the day; and wages should be paid to the servant." 'To the servant,' *i. e.* to the steward (the *Sâdhyapâla*).

Moreover, it is only in regard to the property taken over which was compelled to be given away that a disputant should be allowed to proceed to law; so says the **Same Author**: "One who has accepted the property given must not be allowed by the king to proceed at law; it should either be made over to him, or it should be consigned to another." 'To another,' *i. e.* to a third person, a stakeholder, the meaning is, with him (it should be placed).

Likewise, the order of precedence at the trial also has been stated by the **Same Author**: "There the complainant should first begin to address,

1 Book II. 10.

while the person complained against thereafter; at the conclusion of these two, the councillors, and the chief judge after that." 'Should address first,' *i. e.* should make the affirmation. To that effect also **Nârada**[1]: "A royal edict, a (private) document, a written title, a grant, a pledge, a (promise in) writing, a sale, or a purchase; one who brings an action in regard to any of these before the king, for such a one should be declared to have the right to begin, by those conversant with the laws." The meaning is that in all cases, the complainant has always the right to expound his affirmation. Here the **Same Author**[2]: "One who has suffered greater injury or whose subject matter is (of) greater (importance), to him should be given the plaintiff's right, not (merely) one who first complains." 'Plaintiff's right,' *i. e.* the right to begin. To that effect also **Kâtyâyana**[3]: "One, who has suffered greater injury, or whose subject matter is (of) greater importance, for such a one shall have the right to begin; and not for one who first complains." The meaning is that in a matter of such a character the inversion of the plaintiff's and defendant's position should be made by the investigators. Where both are mutually placed in the position of plaintiffs at the same time by reason of a difference in the object to be accomplished, in such a case the plaintiff's position should be given to one (who is) of a higher caste, or to one whose injury was greater. To that effect **Bṛhaspati**: "Where the plaintiff and the defendant have approached the court, each claiming to be (heard) first, the inquiry should be taken in the order of priority of *varṇas*, or by a consideration of the injury." Even on a similarity of the *varṇa*, (the trial) should be taken by regard to the injury.

When pairs of several plaintiffs appear simultaneously, **Manu**[4] states the order of investigation: "Knowing what is expedient or inexpedient, and what is pure justice or injustice, one should examine the causes of suitors according to the order of the *varṇas*."

Thus in the **Smṛtichandrikâ**, the **commencement of a trial.**

PAGE 36* Now the part relating to the **Plaint.** (**Pratijñâpâdaḥ**)

There **Bṛhaspati**: "When he has appeared, one should cause the case of the plaintiff to be put to writing." The meaning is that when the

1 Intr. II. 38. S. B. E. Vol. XXXIII. p. 33.

2 शासन—See Yâjñ. I. 319. referred to further on under the Title of Documents.

3 Not found in Nârada. The Kâtyâyana Smṛti has a similar rule. See further.

4 Ch. VIII 24.

defendant is near, the plaint should be caused to be written. To that effect also **Yâjñavalkya** [1] : "In the presence of the defendant should be reduced to writing whatever is alleged by the plaintiff." The expression 'whatever is alleged by the plaintiff is used to demonstrate that the point which has been mentioned as to be established, that alone should be written down and not any other point. In short, not that whatever has been stated, all that even should be written; since the **Same Author** says that even of things not stated, such as the year and such other particulars, should be reduced to writing: "Marked with the year, the month, the fortnight, the day, the name, the caste, and the like." Year, *i. e.* the annual period; that moreover to be written down should be of the time when the money was advanced, the month and the like also should be of the same period. The particulars included in the expression 'and such like others' have been pointed out by **Kâtyâyana:** "Having entered the period and the year also, the month, the fortnight, the day likewise, the time, the particular place, the subject; the spot, the caste, the form (of the body), the age, the dimensions of the object to be secured, the quantity, his own name likewise, the names of the kings in order, the dwelling place, the name of the thing to be secured, the names of the ancestors in due order, the injury, the person who took, and the donor, the reasons for forbearance, and other details, the plaint should be filed." 'Period,' *i. e.* the time when the money was advanced and the like; indicated by the king (ruling) at that time; 'the year,' (*varṣham*) such as देववर्ष etc. 'The time,' *Velâ*, such as identified by the act of possession etc.; 'the particular place,' *i. e.* the particular of the object or the action to be secured; 'spot,' such as the country between two rivers. The site of the subject of dispute, such as of a house, village etc. 'Subject matter,' (*viṣhayaḥ*), such as the intervening [2] region or the like. Form *i. e.* particular constitution of the body; 'age,' such as youth etc. 'Dimensions' *i. e.* measurement, such as a rod, a balance, a *prastha* [3] etc. 'Of self,' *i. e.* of the plaintiff, of the kings, and of those in possession of the land etc. for the (particular) period and the like; 'residence,' *i. e.* place of residence, such as a house, a cowpen etc., 'ancestors,' *i. e.* the

1 Book II. 6.

2 अंतर्वेद्यादिदेशः--अंतर्वेदि is the region between two rivers, and watered by these. The region between the two great rivers the Ganges and the Jumna has been particularly known as अंतर्वेदि.

3 प्रस्थ is a measure of land. See Amara II. IX. 89.

.....आढकद्रोणौ खारी वाहो निकुञ्चकः। कुडवः प्रस्थ इत्याद्याः परिमाणार्थकाः पृथक्।

father etc. of the plaintiff and the defendant; 'injury,' either for the[1] surety, caused by the creditor. 'The person who took,' *i. e.* the (original) person who started the acceptance of the donation etc. 'The donor,' *i. e.* the giver; 'the reasons for forbearance,' *i. e.* the causes for bearing with the enjoyment of one's property etc. by another; 'others,' *i. e.* in addition to those pointed out, such as, the interest, the source etc.

To that effect also **Bṛhaspati**: "Faultless, together with an affirmation containing the means of proof and the source (of title), setting out the amount of money, one should write the injury and the motive for forbearance." Likewise, the **Same Author**[2] states other characteristics also: "Briefly worded, pregnant in meaning, absolutely unambiguous, and not confused; containing the statement of the opponent's acts, and asking for a preventive order against the opponent; having carefully examined all these characteristics, and well settled, a plaint so formulated should be accepted; other than this, however, is (only) a semblance of a plaint."

The **Saṅgrahakâra**[3] also: "That is termed a plaint or complaint, which is presented or made to the king, and which contains the cause of action (*artha*), which is in accordance with the law, which is wholly complete, and is free from confusion, which contains the point at issue, which is couched in significant language, and which is consistent with the claim made (out), which is intelligible, not inconsistent, certain, capable of proof, (which is) concise yet bringing out the whole cause of action, not impossible in regard to place or time; which contains the year, the season, the month, the fortnight, the day, the time, the country, and the particular district, the village, the house or dwelling place, the point at issue, the designation, the caste, the personal description and age, which contains the measure and quantity of the object to be secured, the names of the plaintiff himself and of the defendant, and which is marked with the names of the ancestors of himself and of the defendant respectively, as also with the names of kings; (which contains) the cause of forbearance and the injury done to self (*i. e.* the plaintiff); in which are mentioned the names of the grantee and the grantor." '*Arthavat*' *i. e.* containing the occasion (for the complaint); 'in accordance with law,' *i. e.* possessing the characteristics of a concise statement with comprehensive significance; 'complete,' *i.e.*

1 Another reading is प्रतिभुवा धनिकेन कृता—Caused by the surety and the moneylender.

2 Ch. III. 6

3 Cited in Mitâkṣharâ Coll. p. 652. ll. 10–27. Bâlambhaṭṭi assigns this to Nârada.

not in need of any implied[1] supplements ; 'devoid of confusion,' *i. e.* not containing words of doubtful import ; 'containing the point at issue,' which is not without the point which is intended to be established ; 'couched in significant language,' *i. e.* devoid of words having secondary or implied sense ; 'consistent with the claim made,' *i. e.* not contradictory to the first information ; 'intelligible,' *i. e.* the subject matter of which is well known among the people ; 'not inconsistent,' *i. e.* not against the town, nation, the chief judge, the king and the like ; likewise not inconsistent with the preceding and the next following (statements), not contradictory to the direct evidence and such other means of proof, and also not against the rules of positive law and procedure ;

PAGE 37* 'certain,' free from a doubt as to any other meaning ; 'Capable of proof,' *i. e.* which is fit to be proved ; 'concise,' not too much digressive ; 'bringing out the whole cause of action,' *i. e.* stating in entirety without any thing left out ; 'not impossible in regard to place or time,' devoid of statements such as *e. g.* 'a betelnut field of the central provinces, a thousand mango fruit of the *śarat*[2] season,' and the like ; 'marked with the names of the ancestors of himself and of the defendant, as also with the names of kings,' *Paraḥ i. e.* the defendant ; 'himself' *i. e.* the plaintiff ; 'ancestors,' *i. e.* of these, the father and the rest ; several kings of the period of occupation ; the names of these, the names of the ancestors of self and of the defendant, and of the many kings ; marked with these ; the rest is of evident meaning.

The conditions commencing with the mention of the cause of action, and ending with the avoidance of incongruity as to place, time etc. together with the names of the plaintiff and the defendant are of use in regard to the plaints in all kinds of disputes ; therefore these must always be necessarily stated in all plaints ; because without these, the point at issue can nowhere be accomplished with ease. The details as to the year etc., moreover, are not all of these of use in all cases, as even without some of these, there is the possibility of the object being secured. Therefore, where there is a use of these, there only should be entered, and not elsewhere, as there is no necessity. There, (the mention of) the rainy or other season would be of use in a dispute regarding the doubling of

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1 अध्याहारानपेक्ष—no need of adding anything as 'understood' (अध्याहृत).

2 शरत्—one of the six seasonal divisions of a year comprising the months of आश्विन and कार्तिक corresponding approximately to October and November. Both the instances are given as illustrative of an impossibility by place and time.

the amount lent at interest, as also in a dispute regarding priority in transactions of gift, sale, mortgage etc. The mention of the country, region etc., and likewise of the names of the ancestors of the defendant and of himself and of the kings, as also of the grantee and of the grantor, will be of use in disputes regarding immovables. (The mention) of the point at issue, the designation, the caste, the personal description and age, is of use in trials about theft, sale without ownership and the like, as also in disputes regarding money ; (the mention) of the measure and quantity, in disputes regarding things which can be measured or weighed, as also in trials about theft etc. ; (the mention) of the cause of forbearance would be of use in a dispute involving negligence regarding a place and the like; (the mention) of injury to self would be of use in a dispute regarding a debtor and surety ; thus this is the way. In this manner also it should be understood that the inclusion of the cause of action, together with the year etc. should be made at places according to use. Hence also **Kâtyâyana** : "The country, likewise the place, the location likewise also : the caste, the name, the place of residence, the measure and the name of the field also, the recital of the names of the father, the grandfather, also of the past kings—in disputes regarding immovables, these ten should be entered." The import is, that there these are useful.

Hârîta also : "A seat, a bedstead, a conveyance, copper, zinc, iron articles, corn, articles of stone, a cloth, a biped, also a quadruped, jewels, pearls and corals, a diamond, silver and gold—if there be a collection of these (materials), then an enumeration should likewise be made. In whichever country, moreover, by whichever standard an article is measured, by reference to that should the enumeration be made by the dealers." Diamond *i. e.* hard. The meaning is that having measured by that standard, the enumeration should be made.

Thus, moreover, whichever is of use in whatever place, there in the absence of that, the securing of the point at issue being impossible, a particular plea devoid of the necessary detail is certainly unacceptable. Hence also **Kâtyâyana** : "A plaint is regarded as inadmissible which lacks (the mention of) the place and the time, which is devoid of the statement as to the thing (claimed) or the amount, and which is without the means of proof." "Means of proof,' *i. e.* the measure of the thing claimed. Likewise, a plaint which is devoid of the characteristics of a cause and the like, must certainly be discarded[1] : "The king should discard a plaint which (contains what) is impossible, does not disclose any injury (to the complainant),

1 A text of Bṛhaspati.

is meaningless or causeless, cannot be proved, or is contradictory." There 'an impossible' has been explained by **Bṛhaspati**: "That which has not been done by any one is known as impossible." There, the example is 'A pot of one thousand[1] *palas* has been taken away." 'Not disclosing any injury' *i. e.* harmless; e. g. he carries on (his affairs) in his own house in the lustre of the bright lamp in my house. The meaningless and causeless have, however, been pointed out by **Bṛhaspati**: "A petty fault about a trifling matter is known as 'meaningless'; while that which involves no disturbance in the work should be known as 'causeless." PAGE 38* There the example of meaningless: 'I was gazed at by him with a smile,' or 'my lac was taken away by him.' Of 'causeless,' however, such as 'Yajñadatta boastingly repeats near my house.' By another way also have these two been expounded by the **Same Author**: "A proceeding which does not contain any of the titles such as money lent at interest etc. is a meaningless proceeding; also that which is without abuse or the like is a 'causeless' one." That which does not contain any of the eighteen titles of law, such as Recovery of debts and the like, is meaningless; a plaint not containing material not useful for establishing the point at issue such as abuse etc. is causeless; this is the meaning.

Plaints which cannot be proved, and also those which are contradictory, have also been expounded by the **Same Author**: "'This man must return my bow made of a hare's horn,' such a plaint the wise call impossible and unworkable. A plaint, in which when recited, there would be opposition against the chief judge or even the king, or the city, the nation, such a one is called contradictory."

Nârada[2] also points out the faults of plaint. "Where a plaint relates to a different subject, is meaningless, which is without the (means of) proof or of title, of which the writing is deficient, or redundant, or damaged, these have been declared as the defects of a plaint." He **himself** expounds (these): "In a common cause where one pleads, or for a plaintiff when not appointed, such a one, the wise regard as pleading for another." The meaning is that where one only of a group pleads the

1 पलसहस्रङ्कृतं स्थालं गृहीतम्—स्थाल (*sthâla*) is a pot, a vessel; पल is a measure =4 or 5 *suvarṇas*; and one *Suvarṇa*=16 *Mâṣhas*. Thus a pot of 1000 *palas* would be 5000 suvarṇas about 2 maunds. This is given as an example of an impossible thing. A more appropriate example is the one given in the *Mitâkṣharâ* viz. 'theft of a hare's horn'.

2 Intr. II. 8.

cause of the association ; or of one when not appointed or related in a plaint. " Where out of hatred or infatuity one declares. 'This man is a Brâhmicide,' and gives up the point, such a plaint is regarded as one without a cause." The meaning is that where a declared point is abandoned by the plaintiff, such a plaint should be regarded as lost. " Where in a suit which is for counting, weighing, or measuring, as also in that in regard to a house, field, or the like, the number is not set out, such a suit is (regarded as) devoid of a standard. That plaint is regarded as sourceless (*anâgamá*), where it is not written whether (the subject) was acquired by learning, or was secured by a pledge, or was received as a donation, or purchased or accrued in hereditary succession[1]. Where, the year, the month, the fortnight, the date, as also the day have not been written, that should be regarded as one where the writing is deficient. Where after writing out a plaint, and while yet an answer has not been set out, one indicates his witness even before, that plaint should be regarded as redundant. Where the pleas for both sides have all been written by the plaintiff or the first informant and is written ambiguously, that plaint is regarded as 'damaged' (*bhraṣhṭam*)." The meaning is, where the pleas for both sides have all been written by the plaintiff, the first informant.

Likewise, the **Same Author** states other pleas also which are unacceptable: " A plaint is considered as unacceptable which is out of order (*Bhinnakrama*), is in an inverted order (*Vyutkrama*), is in confused order (*Prakirṇârtha*), or which is meaningless ; as also that the object aimed at in which is beyond time, and also one which is multifarious (*Uddishṭa*). " There, the *Bhinnakrama*, out of order has been expounded by **the Same** : "That plaint has been declared as out of order, where an idea of the plea cannot be gathered by putting (the words) in proper places."

The meaning is that that is 'out of order' where the letters have been placed in inverted order. ' In inverted order' *i. e.* the meaning of which becomes intelligible by placing (the words) in separate order. 'In confused order' *i. e.* where the sense is scattered. The **Same Author** expounds the meaningless and others. " Where the original sense is abandoned, and its effect is set out, such a plea is indeed ' meaningless ' as it lacks the means of proof."

1 Here is a reference to the five principal universally regarded sources of acquisition of ownership Cp. *Gautama* स्वामी रिक्थक्रयसंविभागपरिग्रहाधिगमैः--

Where an object is set out which has passed beyond time, such a plea is regarded as beyond time although there exist means of proof. A plea in which the point at issue is twofold, being in reference to different periods, and which is discriminated by reason of a difference of proof, that is declared as 'multifarious.'' 'Means of proof', *i. e.* original means of proof. 'Beyond time' *i. e*, beyond the period of limitation. 'Difference of proof,' *i. e.* difference in the means of proof.

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Likewise, the **Same Author** mentions other faulty plaints also. "By inserting a different letter, as also by causing another meaning to arise, a writing becomes confused, and the evidence also is rendered confused. Where there has been a neglect for twenty or ten years of the thing asked even by one who was competent, the case of such a one becomes falsified. Where one writes down the means of proof along with the thing to be secured, by reason of the absence of the order of the recitals, such a suit also does not succeed." Evidence for securing the object is the means of proof.

Hârîta also: "A plaint in which the object to be secured and the means of proof therefor have been entered in two ways, either from one's own objective or the other alternative, such a suit also is negatived." 'Means of proof' *i. e.* the point which has been set out for being established; 'in two ways,' *i. e.* by two different means, either in regard to the object to be secured, or by a way different from the known object *i. e.* by its opposite way, a suit in which it is entered, that also is a faulty suit; this is the meaning.

Bhṛgu also: "Where the point has been abandoned by a defeated party, or where one alternative is to be assumed at a time, there the object aimed at will not be secured, as being excluded by the *S'âstra* and the *S'iṣhtas*" 'Defeated,' *i. e.* the defeated claimant. Where in one suit a contradictory as well as an uncontradictory, both points have been entered, one should summarily dismiss such a suit." **Pitâmaha** also: "A party who includes statements which are mutually contradictory, the suit of such a one will not succeed, being a mixture of contradictory aversions." **Kâtyâyana**, also: "A party who does not say that '(the opponent) does not wish to do what is just, or does what is not just, the suit of such a one will not succeed:" The meaning is that one who does not plead *e. g.* that 'After having taken my property which accrued to me justly, like this, in a negative manner pleading obstruction (on

the part of the defendant), or ' he takes away my land &c. ' like this in the form of a positive statement. **Also** : " A plaint which is opposed to the town, or the nation, as also that which has been excluded by the King, and which is a mixture of several pleas, does not succeed." That which is opposed to the usage of the town, or the nation, or which contains an object which has been excluded by the King, such as a tax, a building &c, one, which is a mixture of several pleas, such as recovery of a debt and the like, by reason of a difference of evidence, does not succeed ; this is the meaning.

As to what has been stated by the **Same Author** : "A King, desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts, but which is in conformity with the principles of law", that is with a view to demonstrate the admissibility of a mixture of several causes, if differing in time ; or for demonstrating that for a proper statement of facts as they occurred in the case of several kinds incorporated in one title such as recovery of debts or the like, or of the same kind such as gold, beast, corn and the like, taken under different conditions as to the number, measure, country, period, (rate of) interest, and the like, and that all that should be (ordered to be) paid back, and thus should be regarded as admissible. Therefore, there is no contradiction with ancient texts. "The origin, free possession, interruption, and supplication likewise ; these four when mentioned without the cause are declared as faults of a plaint". 'Origin', *i. e.* the source of the acquisition of property such as acceptance of a donation or the like ; 'free possession', *i. e.* uninterrupted possession according to one's wish ; 'interruption' *i. e.* owing to national calamity or a like cause of break in the same possession ; 'supplication' *i. e.* statement of the origin of possession by arguments. These four *i. e.* the origin etc. are declared as the qualities of a plaint. Those 'origin' etc. when moreover, have been entered in the plaint without the cause *i. e.* without the reason for their inclusion, those are declared to be the faults of a plaint. Therefore, here that which is in requisition should be retained, while that which is not in requisition should be struck off ; to that effect also the same **Author** : "One should cut

PAGE 40* out the redundant points, and should also duly supplement the defective : one should set out on the floor so long as the cause of action has not been determined". 'Cut out' *i. e.* take off. 'Cut out,' *i. e.*, strike off ; 'on the floor' is (only) indicative by implication. Moreover, the **Same Author** : "The Chief Judge should write down the plaintiff's statement, as made by him naturally in his own way,

on a board in white chalk, and then on a parchment, after it has been revised". 'As made naturally in his own way', *i. e.* made without fear or any other like external cause; 'revised', *i. e.* cleared of defects or redundants, as also cleared of the faults, such as impossibility etc. To that effect also **Bṛhaspati**[1]: "Those conversant with (the requisites of) a plaint, regard that as a good plaint which has been freed from the faults of a first information, where the point at issue is accompanied with its cause, which is definite and well established among the people". 'Well established among the people' *i. e.* not opposed to the general law, as it comes to be stated by this text itself, viz. 'well-known among the people' that such a cause of action is free from the defects of a plaint. Hence also **Manu**[2]: "A plaint is not regarded as admissible in court, even though its cause is well established, if it speaks outside the established rules of procedure". The meaning is that the members of a Court must not accept a plaint if it is against the rules of procedure even though it be free from all faults.

A plaint of the characteristics as stated above, is of four varieties, so says **Bṛhaspati**: "A plaint should be known to be of four varieties, viz. that containing a charge based on suspicion, or on facts, as also a prayer for the object asked for, and a fresh decision of a dispute which had been decided before". In this connection **Nârada**: "One may make corrections in the first information of a complainant so long as the answer has not appeared in the plaint; when blocked by the answer, the correction shall cease".

It should not, however, be supposed that like the rule in the maxim of the conch[3] and the time a plaint cannot be revised after the time for filing an answer is passed, since says the **Same Author**[4]: "Before the defendant tenders the answer to the plaint, the plaintiff may amend his statements as much as he desires". Some desire a revision even after an answer has been entered, but that should be discarded, as it would lead to a state of incongruity, and would also be contradictory

1 This text is also ascribed to *Kâtyâyana* by some.

2 See Manu Ch. VIII. 165. There, the reading is सत्या न भाषा etc. The verse occurs in reference to the agreements as to payments of debts.

3 शंखचक्रन्याय *i. e.* The rule of simultaneity or concommittance. e. g. at a particular period of the day, a particular note (of the conch) is fixed to be struck, and by that particular note, the particular period is inferred; so simultaneity, or contiguous order is indicated by this maxim. e. g. चैत्रोत्तरं वैशाखः.

4 Intr. II. 7.

to the texts stated before. Hence also the **Saṅgrahakâra**: "After the incomplete and redundant portions of a plaint have been well adjusted by the officers, again having concentrated attention, one should hear the answer thereafter ; since, after the defendant has commenced the answer, the statement of the plaintiff must not be accepted, even if useful, as the time (therefor) has gone by". 'Commenced', *i. e.* given. For, while yet the answer is being given a replication is admissible. To that effect also **Kâtyâyana**: "Either through forgetfulness, or trickery, if anything has not been stated by the first informant, that may be accepted from both even in the course of the answer". "From both", *i. e.* from the plaintiff and the defendant. Of the defendant, however, (addition to) the answer may be (admitted) during the course of evidence.

When, however, an answer has been accepted by the members of the court without even revising the first complaint, then after punishing the members, the procedure of an affirmation again may be observed.

When, however, the plaintiff is unable to make the affirmation immediately, then says **Bṛhaspati**: "If the complainant is not able to make a statement owing to incapacity, time should be given to him according to the requirements of the transaction and his capacity".

Thus in the **Smṛtichandrikâ**, the **part** relating to the **Plaint.**

Now the **part** relating to the **Answer–Uttarapâdaḥ.**

There **Bṛhaspati**[1]: "When the first complaint has been properly determined after sifting the acceptable and the unacceptable, and after the cause of action in the plaint has been fixed, thereafter, one should cause the answer to be written down". The meaning is, that although determined by the plaintiff, when the plaint is firmly fixed by the chief judge etc. after discrimination, thereafter the defendant should be made to have the reply to the plaint written.

Nârada also: "When, however, a plaint of this character has been settled by the plaintiff, then the defendant should give a reply relating to that plaint". Of the expression 'of this character', the meaning is expounded by **Hârîta**: "Concise in words, profuse in meaning, devoid of the faults of a plaint, having witnesses, containing the cause, faultless, well settled, where such a plaint has been written by the plaintiff, the defendant should then give a reply relating to that plaint". 'Having witnesses', *i. e.* having those on it who have inspected it, such as the Chief Judge and

1 Ch. IV. 1.

the like. When, however, not of this character, then he need not give; this is evident from the context; to make this clear, the **Same Author** takes as an example (a case of) a faulty plaint, and says that to such a one, no answer need be given; "Where the land is common (property), or where the money is vested in an association, when one man makes an application, a wise man should not declare a reply."

Therefore, to a plaint which has been duly examined alone should an answer be given; so says **Yâjñavalkya**:[1] "Of the defendant, who has heard the plaint, the answer should be taken down in writing, in the presence of the first informant (plaintiff or complainant)." Of the person giving a reply to the plaint which he has heard; this is the literal meaning. The **Saṅgrahakâra** also: "When a plaint has been written down upon paper containing a statement which can have no other meaning, not a secondary sense, which contains a lawful origin, and which is made up of words which are not incomplete or redundant, vitiated, or made of other letters, this then is the time for the defendant to give a reply." The meaning is that after a plaint has been written in such a manner that all the characteristics, such as having no other sense and the like are there.

This rule as to time, however, is only in regard to the cows and the like. For so **Nârada**[2]: "In charges concerning cows, land, gold, women, theft, abuse, and in emergent cases, as also in heinous offences, and in (the case of) a calumny, he (the defendant) should be asked to plead in defence immediately only." 'Calumny,' *i. e.* an averment of a sinful act; although it is a kind of abuse, its repetition again is with a view to (its) importance. An emergent case has been mentioned by **Kâtyâyana**: "Where the excellence of a thing is likely to deteriorate, or suffer destruction or loss even, there no time should be allowed; it must be attended to, for indeed that is an emergent case." Likewise, in regard to other matters the answer, should also be immediate; so says the **Same Author**: "In (a dispute regarding) a cow, a bull, a field, women, delivery likewise, deposit, bailment given for use, similarly also purchase, and sale; violation of a maiden, theft, quarrel, violence, a deposit, circumvention, and false testimony also, he (the defendant) should be compelled to plead immediately." 'Circumvention,' (something) agreed to under the influence of fear. **Yâjñavalkya**[3] also: "In charges regarding felony, theft, assault, and cow-killing, and in a complaint in an emergency, and about a woman, one must compel the respondent to plead im-

1 Book II. 7. 2 Intr. I. 45. 3 Book II. 12.

mediately only; in other cases, time has been permitted at discretion (of the court)." 'In other cases,' *i. e.* such as in a case of debt &c. So also **Nârada**[1] "Owing to the recon-
PAGE 42* dite nature of lawsuits, and the weakness of memory, in cases relating to debts &c., one may allow time at discretion; with a view to ascertain the true facts," 'Relating to debts etc.' *i. e.* relating to the titles of law such as Recovery of debts and the like. Hence also **Pitâmaha**: "In suits relating to debts, bailments, deposits, donations, compact among men engaged in joint undertakings, and for a share of a heritage, time should be allowed with effort."

In these and other cases also, time should be granted only to a defendant asking for it on grounds of failure of memory or the like. To that effect also **Kâtyâyana**: "After hearing the point reduced to writing, if the defendant in the suit applies for time for a (proper) reason, it should undoubtedly be given to him." In regard to recently concluded transactions, there being the possibility of remembrance, immediately should the dispute be (proceeded with); so says the **Same Author**: "In regard to transactions recently made, the defendant should be asked to plead immediately; or in regard to those over which time has passed, the king may grant time to the defendant." The expression 'to the defendant' is (only) indicative; hence also **Nârada**[2]: "When a party to a suit desires to plead, but whose mind does not work, time should certainly be given to the plaintiff and the defendant also."

And time should be given. If it be asked, how much? The **Same Author** says: "Immediate, or one or five days, or three days, according to the greatness or smallness of the cause; one may get a month, or three fortnights, or seven days in disputes about debts etc." **Gautama**[3] also: "He may wait for a year." In this respect **Kâtyâyana** states a rule of adjustment: "Having ascertained the time, and the capacity, as also the importance or unimportance of the transactions, the king should give a short or a long time to the defendant asking for it." 'Time,' in regard to monetary relations etc., 'capacity' in regard to transactions which have become the subject matter of the dispute. The meaning of the verse, however, has been expounded by the **Same Author**: "For a recent happening, immediate only; where a year has passed, it should be a day; for six years it should be three nights; seven days, for a twelve years' (inter-

1 Intr. I. 44. 2 Not found in the printed text. 3 Ch. XIII. 28.

val) ; for twenty years, ten days, or he may get half a month ; a month, when thirty years have elapsed ; three fortnights shall be thereafter." The Author points out the rule of adjustment by regard to capacity : "For a period of less than a year, he may grant himself as he likes ; for a year in the case of the idiot, the lunatic or one suffering from a disease. Where one has gone in another direction, as also where the particulars of the thing are not known, or where the thing itself or the witnesses are in another country, there time should be given to men until their return to their own country." For the several alternatives commencing with a period of less than a year, a day ending with three fortnights, should as before be adjusted by the presiding authority of the court according to the requirements of the cases. 'The thing itself,' *i. e.* the property, the subject matter in dispute.

Likewise, the **Author** explains the rule of adjustment by regard to the transaction : "A day, a month, or a month and a half, a season, or a year even, may be granted at the longest, according to the nature of the transaction." 'Nature of the transaction,' *i. e.* the nature as to the greatness or smallness of the transaction.

As the adjourned time thus adjusted arrives, an answer should be written which will not be less or in excess of the substance of the plaint ; so says **Bṛhaspati** : "When the disputants have simultaneously gathered together near the member of the court, he should cause an answer to be written appropriate to the recitals of the plaint." In this respect, **Kâtyâyana** states a rule in regard to the king : "Whatever the customary rule as handed down by successive traditions in a particular case may be, taking that into consideration, the king should cause an answer to be given according to law."

Prajâpati states the characteristics of an Answer : "Men versed in law regard that as an answer, which covers (the points raised in) the plaint, is substantial, unambiguous, not inconsistent, and is intelligible without an explanation." 'Covers the plaint' *i. e.* covers the entire plaint ; 'substantial,' *i. e.* capable of meeting as an answer the averments of the plaintiff ; 'unambiguous,' devoid of break, implications etc. ; 'not inconsistent,' *i.e.* consistent with the point at issue ; 'intelligible without an explanation,' *i. e.* easily understandable. **Hârîta** also : "In close connection with the points in the first information, of profuse sense, not confused, not criptic, not with its words loosely joined, nor too prolix, essentially concise, un-

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ambiguous, not arising out of only one point in the plea, audible to the plaintiff, not having a suppressed sense, an answer of this character should be given." 'In close connection with the points in the first information,' *i. e.* closely in pursuance of the asseveration; 'of profuse sense,' *i. e.* covering all the points at issue; 'not with the words loosely joined,' *i. e.* preceded by an affirmation for definiteness; 'not arising out of only one point at issue,' *i. e.* covering exhaustively all the points of one's plea without any left out; 'audible to the plaintiff,' *i. e.* heard by the first informant; 'not having a suppressed sense,' i. e. uncrooked in style and intelligible by (the use of) well known words.

An answer of this character should be known to be of four kinds. "Of four varieties is a plaint, and similarly also the defense should be of the same kind", vide this text of **Bṛhaspati.** What are the four varieties of the respondent's plea? Anticipating this, says **Nârada**[1]: "A denial, by admission also, or by a counterplea, and by proving a former decision, thus an answer may be of four varieties." The instrumental case here is of these characteristics.

There **Kâtyâyana** states the characteristics of the two pleas of denial and admission: "When accused, if one denies the charge, that answer one should know as of denial in the legal procedure. The admission as to the truth of the point involved is declared to be (the plea of) admission."

The characteristics of a counter plea, have been stated by **Nârada:** "When the defendant admits the statement made by the plaintiff, but sets up a reason, that is called a counter-plea (or confession and avoidance)."

Hârîta states the characteristics of a former decision: "If a (party) says that, 'In regard to this cause of action there was a dispute before between him and me, and he was vanquished,' that is known as an answer of a former decision (or *res judicata*)." The answers described as above with the characteristics have been stated by **Prajâpati** with a view to elucidation: 'Whatever has been stated here by the plaintiff in regard to me, all that has never happened' this answer has been stated in the smṛtis as a denial. 'This has to be paid to him; what plaintiff has stated is not untrue,' thus is the second (kind of an) answer, known as admission. 'This was certainly given by him to me; but it was also paid back to him by me,' (an answer) of this sort is known as a counter-plea. 'In regard to this cause of action I was sued before by the plaintiff, and he was vanquished by me in that suit,' this is called the plea of a former decision."

1 Intr. II. 4.

This plea of a former decision or *res judicata* is of three varieties; so says **Kâtyâyana**: "I shall prove by (the evidence of) persons in authority, of witnesses, or by a document, that he was vanquished by me formerly; thus a plea of *res judicata* is of three varieties." The expression 'By persons in authority' is indicative, by implication, of the investigators in the judicial proceeding.

Likewise (the plea of) denial is of four kinds; so says the **Same Author**: 'This is false,' 'I do not know,' 'I was not present there at the time,' and 'I was not born at that time,' thus the answer of a denial is of four varieties." In this manner, in the plea of an admission also, varieties may be inferred according to possibilities e. g. 'true.' 'It is so, as he says' and the like. Of the counter-plea also, '(yes) was accepted, (but) was given back,' or 'was obtained as a donation' etc. such and other varieties may be noted.

In this connection **Bṛhaspati**: "The law has been stated relating to the defendant in regard to the demonstration of the points raised; as issues of the four varieties also, which should not be accepted, that is being stated now; what is other than the point at issue, which is abstract, which is less or more, and what is irrelevant; what is not comprehensive, which is unsubstantial, dubious, one should not allow an opponent to plead." 'Other than the point at issue,' *i. e.* not capable of removing the allegations made in the plaintiff's averment; 'abstract,' *i. e.* which is devoid of the position of a defendant; 'irrelevant' *i. e.* which does not pursue (the point in) the accusation.'

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Kâtyâyana also: "A reply which is ununderstandable, contradictory, too criptic or too prolix, dubious, impossible, not clear, irrelevant, full of the fault of exaggeration, which does not meet all the points (in the plaint), which interrupts the plaintiff in stating his plaint, has a suppressed meaning, (given) while he is confused, likewise (which) requires an explanation, is senseless, is unsubstantial, is not commended by the wise." Here the **Same Author** expounds the first five (varieties of) a faulty reply: "A reply which has been written without knowing the thousands of marks and forms, or the compact, or which has been stated in another language, is known as ununderstandable." The meaning is that that is (called) ununderstandable which has been stated in ignorance of the number of marks, or parts of the body, or of the compact, or which is couched in a language not of the country. 'It was returned in my childhood' or 'it

was indeed not returned', when one states in such a manner, that reply should be known as 'contradictory.' The meaning is that, that of which the first (part) is contradictory to the other (part), is a contradictory reply.

" Where, instead of stating ' he was formerly vanquished by me in regard to this point,' it states ' formerly by me,' such a reply is (called) incomplete." The meaning is that when it should have been stated that ' in regard to this cause of action he was formerly vanquished by me,' he simply says ' formerly by me,' that (reply) is an incomplete reply. When the reply should be ' was taken by me,' it is added, ' I did the work for it, (*i. e.* for) the money which was formerly taken," that is an answer which is too prolix." Instead of stating a reply of admission, viz. ' was taken,' (with the addition) that the work ' etc., the reply is too prolix ; this is the meaning.

" When the statement should be ' is payable by me ' it is ' it is (not) payable by me,' the reply should be known by the wise as ambiguous." In the clause ' payable by me ' a suppressed *a*[1] is found to be indicated by the sign ऽ, it is ambiguous ; of this kind ; this is the meaning. 'Impossible,' ' the money (asked) to be payable by me had been paid by the son of my great grandson ' a reply of this sort." ' Not clear,' *i. e.* not possible to be easily declared, 'this is the reply.' These two kinds of faulty replies are clear, therefore have not been expounded.

The Author expounds an irrelevant plea ; 'Violence was formerly directed by this either by force or weakness,' such a statement is regarded as ' no statement,' and is called irrelevant. The meaning is that that is (regarded as) irrelevant, which becomes exhausted by the statements of the plaintiff more than once, and which contains clauses which are mutually contradictory. ' Full of the fault of exaggeration,' *i. e.* by reason of an exaggerated statement, becoming faulty, *e. g.* when the charge is 'a hundred should be paid,' the answer is ' two hundred have been paid,' and the like. The **Same Author** has expounded the four faults viz. 'Not meeting all the points' and others : "When the plaint avers, ' A thousand and a half were given to this man,' and when the answer is ' half of that has been paid back,' that is an answer which does not meet all the points."

Where, while the plaintiff has not properly set out his case in the plaint, the defendant (interrupts and) says ' nothing was taken formerly by me,' that is an answer by interruption. The meaning is that even

1 अकारप्रश्लेष—the letter अ, meaning a negation, and expressed by the sign ऽ (अवग्रह). e. g. here देयं मयाऽदेयं भवेत् ॥.

before the settlement of the plaint, an answer, such as denial &c. is an answer of interruption.

" The answer which says ' can any one return a red lotus which was not taken ? ' should be known in legal procedure to be one having a concealed meaning[1]." The meaning of the illustration of this kind of faulty answer is ' A (red) lotus was not taken and so I will not give." " When the reply is, ' is it always by him to be paid ; may be, by me also may have to be given,' such a one is called a confused reply." The meaning is that, that is a confused reply where several words are connected. ' To be understood by means of comments,' *i. e.* by itself difficult to be understood. The unsubstantial has been stated by **him** : " No teeth exist of a crow, where the answer says—exist,' that answer is known to be unsubstantial (*asâra*)." The meaning is that like the appearance of teeth in a crow, it is purposeless.

Likewise, where occur in the same plea, the pleas of admission, denial, and many other such pleas, that is regarded as 'no answer ;' so says the **Same Author** : " That which admits of part of the claim as true, sets up a special plea as to another part, makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)."

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It may be argued : indeed even in a mixture, as by each answer there is the repudiation of each part of the plaint, there would be a counter-plea for the entire plaint, how then can it be said that it is no answer ? True : and it is for this reason that the **Same Author** has stated in justification of its being no answer : " Moreover, in one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit."

The meaning is this : Proof consists of documents and other means (of proof), the burden of that lies upon the defendant only in the pleas of counter-claim and *res judicata* also ; in an answer of denial, however, upon the plaintiff only ; in the plea of admission (of the truth of the plaint), it does not lie upon any one, as will be stated hereafter. Thus then where there is a combination of the three pleas other than that of admission, there the defendant has to adduce proof in two, while for the plaintiff it is in one ; where (the combination is) of an admission and a denial, there defendant alone has the (burden of) proof for the two

1 निगूढार्थ, of mysterious import. The Mitâkṣharâ points a different interpretation for this term (See p. 663. ll. 11–16,)

moreover, it is of the denial and the special plea, or of the denial and *res judicata*, there the (burden of) proof lies on the plaintiff and the defendant in regard to each one. It should not, moreover, be said 'let it be as may happen (to be necessary); for, indeed, proof is adduced for the establishment of the point at issue[1]'. In one trial, there is only one point at issue, and of one disputant only ; therefore, there cannot be the (burden of) proof on two, or on one, for two points ; as there cannot be a point to be established by both ; and moreover, when one point at issue has been established by one means, proof by another would be useless. In (the case of) an answer by admission, however, in a combination with other pleas, this fault does not occur, still in one investigation, in regard to the four parts, and in regard to a half of it, a conclusion would be contradictory ; and, therefore, there also, it would be (a case of) 'no answer' also. Therefore it has been properly stated 'By (reason of) a combination, it would be a non-answer.'

Thus, moreover, one answer only should be admitted which would cover the plaint in entirety. Where, however, in any case an answer of that kind is not obtainable, but on the other hand a variety of an answer on each portion variously, there on account of helplessness, in conformity to the answer, several plaints should be affirmed with a view to avoid a fault in the plaint, a separate answer for each plaint should be taken. Otherwise there would be certainly an absence of a decision. Hence also has it been said 'By reason of a combination, it would be a 'non-answer.'' The import is that according to the prescribed procedure, when the combination (of pleas) is removed, there would be the answer itself. Hence also in regard to this subject, in accepting an answer, has been stated by **Hârîta** the rule of priority to be preceded by putting questions thus : "If a denial[2] and a special exception should occur together, and also if the plea of admission (be made) with any other, which of these should be accepted as an answer ?" The inference is, the first ; the Author states the first which should be accepted : "That which contains the most important point or which is conducive of proof, is to be regarded as an unmixed answer ; any other answer becomes otherwise." The meaning is this: when there are more answers than one, other than an answer of admission, that which contains the most important point should be accepted first. When the answer of admission is along with more than one, the answer of

1 In regard to the discussion as to the combination of pleas. See Mitâkṣharâ Text pp. 8–9 and Transl. Coll. pp. 664–667.

2 मिश्रोत्तरं is a better reading. Aparârka assigns this text to Vyâsa.

admission even though containing the most important point should be discarded and another answer should be accepted, as no result would be produced by the answer of admission.

It should not be said that this text is only applicable where at the time of (filing) a reply there is an intention of giving more than one answer which will cover the plaint, on account of the undesirable position of taking as (implied or) understood words indicative of an order e. g. upon an accusation by a certain man viz. 'a lost cow of mine was seen in the house of this man, the person charged answers, 'This is false; in my house itself was it born' or the like. Since it has been stated "Not a mixed one; other than this becomes otherwise." The meaning of this: thus if in this order, an answer becomes unmixed, otherwise than this *i. e.* if simultaneously, it certainly would become a mixed plea. In the case of more than one answers, however, covering the plaint, there is no possibility whatsoever for a plea being (regarded as) a mixed one, therefore this text is only in regard to a mixed answer. Hence also, in regard to more than one answers covering a plaint, another text has been commenced by the **Same Author**: "Of the two answers, viz. of denial and special exception, the special exception should be accepted." The import is that by reason of its unmistaken demonstration, the answer of a special exception has greater weight than the answer of denial. Therefore it should be taken as understood that the answers of a denial and of a special reason being taken merely as illustrations, even in a simultaneous occurrence with another answer, that which contains the most important point should be taken. Where, however, in an answer of combined pleas, by reason of a parity of importance there is no scope for the order as stated before,

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there also, the answer should be admitted in an optional order as a decision has necessarily to be reached. An answer thus determined, should be given by the defendant himself alone. To that effect also **Hârîta**: "There after the essence of the point at issue, has been properly drawn out an answer should be offered by the defendant in close pursuance of the plaint, and should be absolutely free from faults and marks."

When, however, he by himself does not give, and the time for giving an answer has also elapsed, then says the **Same Author**: "To the plaint, if the defendant does not give an adequate reply, then he should be compelled to give by means of peaceful persuasion and like other methods." Should be compelled' *i. e.* by the king. So also **Nârada**: "One should give a

proper reply to the point at issue ; one not giving, the king should compel to give, by means such as peaceful persuasion, schism etc., until that point has been properly brought up." The peaceful persuasion and other means have been pointed out by **Hârîta** : "Speech with pleasing persuasion is *sâma* or conciliation, breach is the show of fear ; and inducing by a money payment is gift ; punishment is beating and confining."

By **Vasiṣṭha** also : "Crookedness, peace, and breach, also punishment, these four ; delusion, forbearance, and trickeries. are the seven means declared." For one who is not amenable to these means even, the **Same Author** says : "When goaded by (these) means, one, however, who does not give a reply, such a one after the passing of seven nights, is (regarded as) defeated ; and becomes liable to pay."

Thus in the **Smṛtichandrikâ** the **part** relating to the **Answer.**

Now some texts bearing on the topic of disputes are, being written. There **Yâjñavalkya** :[1] "Without being discharged from an accusation (already pending against him), a person should not be allowed to be charged again." 'Without being discharged *i. e.*, without removing away. Here, the **Same Author**[2] states an exception : "A countercharge may be allowed in a case of delict as also of heinous offences." The meaning is that (in such cases) there is a likelihood of a counter offence. 'In delict,' *i. e.* in the case of both kinds of violences (*Pârushya*).

In regard to the accuser also the **Same Author**[3] says : "Nor what has been alleged should be allowed to be changed." While one who has been charged by another complainant, another complainant should not (be allowed to) charge before that complaint is refuted. The meaning is, that by giving up the refutation of that, another should not be stated. He, moreover, who pleads another, such a one becomes defeated by reason of his change of statement. To that effect also **Nârada**[4] : "One who alters a statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds when summoned, these are the five varieties of a *Hîna* litigant." Likewise, a *Hîna* on account of his taking to another pleading, has been described by

1 Book II. 9. 2 Book II. 10. 3 Book II. 9.

4 Intr. II. 33. Here the word अन्यथा is taken as elsewhere *i. e.* in another proceeding, and not the usual sense in which it is used *i. e.* false. In the original Smṛti of Nârada, this expression is used in reference to one who alters his former statement in the same proceeding.

the **Same Author**: [1] "He who gives up a former pleading and betakes to another again, such a man should be regarded as a *Hîna* or defeated litigan by reason of his transition from (a) dispute (to another)." 'Former pleading' *i. e.*, the (first) information. So also **Kâtyâyana**: "After having lodged a plaint, if one abandons it and files another, such a one thereby will be deemed to have started another plaint, and on that account will lose (the cause)."

So also having once charged another, one says 'I will not proceed with the charge' and thus speaks contrarily, such a one also, by reason of his having pleaded differently, loses; so says the **Same Author**: "If a person after having charged another says 'I did not put forward the dispute' and thus speaks contrarily, such a one should be declared a loser." Similarly also one who departs from his first plaint reduced to writing, loses his case by reason of a departure of pleading; so says the **Same Author**:

"One, however, who after having caused to be written
PAGE 47* a statement, subsequently makes a statement again in reduction or addition to it, such a one loses; he is not entitled to make a change." 'Caused to be written,' *i. e.* on paper, as writing and striking off on the ground has been stated by the same writer; 'Charge,' *i. e.* the first complaint.

This undeservedness, however, should be understood to be only when the answer has been finished. If an answer has not been finished, there would be loss (of the suit) only, but not undeservedness, as before the reply is completed, the revision of the plaint has been permitted in the case of forgetfulness or helplessness. Similarly a party incurring the loss of his suit has been pointed out by the **Same Author** by his avoiding the evidence or not being present: "The members of the court as well as witnesses should be regarded as evidence (*Kriyâ*), by the wise; he who avoids such evidence through infatuation is called the hater of a trial (*Kriyâdweshi*); after the summons, if he does not appear, he is non-suited at once." The meaning is, that for non-appearance after the summons, he loses the suit immediately. Likewise, the **Same Author** describes a suitor who is non-suited for not giving a reply: "If even when called upon to speak one does not speak, incurs immediate imprisonment; on the second day defeat should be regarded to be of

1 Nârada Intr. II. 24.

2 हीन—a person who loses a cause; a defeated party; and हीनता is defeat or loss of a suit.

that wicked man." 'Defeat' *i. e.* loss. Hence also **Hârita**: "If one passes time under an excuse, even without making a statement in the court, and while making a statement, he states falsely, is the mark of a losing party." 'Under an excuse,' *i. e.* under a pretext. So also **Kâtyâyana**: "Under a pretext merely, one who desires to have a long (adjournment of) time, that should be known as deceitful, and has been declared as a reason causing the dismissal of the suit."

'One running away when summoned' is also one who after having come to know of the summons, for the removal of a charge skulkingly moves about. With a view to indicate the liability for a dismissal greater and greater in degree in succeeding order, the **text**—'a *Hîna* is of five varieties' has been stated; and not for restricting that five only are the varieties of a *Hîna*, as *Hînas* have been stated in the *Smṛtis*, under other circumstances also. The object of indicating the greater liability of a *Hîna*, however, is for indicating the higher punishment. It has also been stated by **Kâtyâyana**: "One changing his pleas should be made to pay five *paṇas*, one avoiding a trial ten *paṇas*, one not appearing twelve, and one not stating a reply sixteen, one running away after he was summoned twenty *paṇas*." Here in the case of the third and the fifth, when a punishment has been incurred, the **Same Author** states a special rule; "When one who has been summoned thrice and has not appeared, or one when summoned is running away and five nights have elapsed the king should punish him." Also *Hîna* on account of another reason has also been indicated by the **Same Author**: "Where one corrupts one of those who have heard the dispute, or tempts a litigant also, such a one should also be declared as a *Hîna*." By **Bṛhaspati** also: "One who causes these *i. e.* fear, or breach, or terrible obstruction to the plaintiff in the trial at law of a money suit, such a one is non-suited." The meaning is that in a suit relating to a money transaction, these *i. e.* fear &c. if all or any are practised by a litigant, such a one is non-suited. 'Terrible', *i. e.* creating fear through another source. By **Manu**[1] also: "One who points to a wrong person, or having pointed out, (afterwards) conceals, as also one who does not realize that his first and subsequent statements are contradictory or confused; or having stated what he meant to prove, afterwards varies (his case), or who being questioned on a fact duly stated by him, does

1 Ch. VIII. 53, 54 and 58.

not abide by it. Having stated that there were per-
PAGE 48* sons who knew, when asked to name (these), one who does not point out, the officer of the court should, for these reasons, declare him to be non-suited (*Hîna*)". The meaning is this : *Adeśyam*, ' wrong person ' *i. e.* a witness who is likely to have been present at the time of the trial, or indicates one who is likely to be available, but afterwards denies, saying ' I did not cite him ; ' who, moreover, does not realize the contradiction in his own statements severally made ; one, also, who ' under an excuse ' *i. e.* a pretext, such as ' I have a pain,' or the like, runs away or absconds ; having made a statement well thought out and settled, when questioned ' what do you say here ? ,' does not give any reply whatsoever. One, moreover, having declared ' There are witnesses,' when asked even to 'mention these, does not mention' then for the reasons aforestated, one in charge of the administration of justice should declare.

From these *Hînas* also a penalty in proportion to the guilt should be recovered. To that effect also is **Kâtyâyana** in connection with the position [1] of the *Hîna* : " That (*i. e.* the penalty) should be recovered in proportion to the guilt, there would be no further litigation." *i. e.* in regard to the establishing of the point at issue.

This prohibition, however, is in regard to disputes caused by anger ; since says **Nârada** : [2] " A verbal trickery does not vitiate all disputes relating to property ; for, in suits relating to cattle, women, land, immovables, and recovery of debts, although (the claimant is) liable to a penalty, one does not lose." The meaning is that in all suits relating to property, such as cattle etc. 'upon a verbal trickery.' *i. e.* even when a wrong statement has been made, ' one does not lose,' *i. e.* the suit is not entirely dismissed ; since in such a case, although he is amenable to a penalty, there is no loss of the claim made.

Here **Kâtyâyana** states an exception : "When the statements of both (sides) have been written down and the trial of the point involved has commenced, one who avers something (which was) not said (before), will have his suit dismissed on that point." **Yâjñavalkya** [3] also : "He who

1 हीनाधिकारे—अधिकार in Sanskrit has a double meaning indicative of the position of a person both in connection with a *right* or *privilege*, as well as *a liability or obligation* or *duty*. In Marathi also the word has a similar double significance.

2 Intr. II. 25. Dr. Jolly reads सर्वेष्वापि for सर्वेष्वर्थविवादेषु.

3 Book II. 16.

tries to substantiate a doubtful claim independently, also, he who absconds, as also he who when summoned (into the court): does not say anything, is considered to be a false litigant (*Hîna*) and punishable also.' 'Independently,' *i. e.* without having resort to an investigator ; ' absconds,' *i. e.* without giving the thing to be rendered falls off, or runs away. When the falseness is established by the use of the word 'punishable,' the use again of the word *Hîna*, is with a view to indicate that his pending suit also is dismissed. Hence also **Nârada** :[1] " One who, without having given notice to the king, tries to right himself in a doubtful point, shall be severely punished, nor shall his claim succeed." **Bṛhaspati**[2] also : " He who absconds after receiving a summons, one who remains silent, one who is defeated by (the depositions of) witnesses, and one who gives an admission in his own statement, such are the four varieties of persons who are (known as) *Hînas* (who lose their cause)." ' One who gives an admission in his own statement,' *i. e.* by his own statement itself he admits the claim. Here also the mention of four varieties is with the object of indicating that the persons mentioned in respective order immediately lose their suits under consideration, and not for restricting that a *Hîna* for a cause under consideration is of four varieties only, as other varieties also have been stated.

There, who loses his suit and when ? anticipating this question the **Same Author**[3] says : " One who absconds, loses the suit after three fortnights ; one who remains silent, after seven days ; and one convicted by witnesses as also one who has given an admission, at that very moment." Similarly, one who points out witnesses and does not (arrange to) take their testimony, also becomes a loser of this variety after a time; so says the **Same Author** :[4] "One who announces witnesses and does not produce them afterwards within thirty days or three fort-nights, suffers defeat in consequence " ' Does not produce ' *i. e.* wilfully.

To that effect **Kâtyâyana** : " One, who after announcing his witnesses, wilfully does not cause their depositions to be taken, such a litigant however, loses his cause after thirty days."

PAGE 49* If not wilfully, then he does not lose. Hence also **Bṛhaspati** :[5] " When a person has promised to appear at a trial, or for the performance of an ordeal, and does not make

1 Intr. I. 46. 2 Ch. V. 5 see also Nârada Intro. II. 32.
3 S. B. E. Vol. XXXIII. p. 296. Ch. V. 6.
4 Ch. V. 7. 5 Ch. V. 8-9. Aparârka assigns these texts to Nârada.

his appearance, it must not be treated as a fraud. If default occurs in such a case on account of an act of God or of the king, for a departure from the time-limit merely, he must not lose his cause."

By observing that 'must not be treated as a fraud,' the author indicates that elsewhere also where (a suspicion of) fraud is removed in regard to statements which would entail a loss of the cause, the judicia investigation should be made. Thus therefore, in regard to disputes about property, where a text does not direct a dismissal of the suit, there only the plaint of one who has lost his cause should be admitted, and not elsewhere. Hence also **Kâtyâyana**: "If either on account of his having absconded, or for not having filed a reply, or for having resorted to a different pleading, a man has (been declared to have) lost his case, his cause may be admitted (again); but not of one who has[1] been defeated out of his own statement."

The meaning is that the cause should be admitted, as there is no extinguishment of the cause on account of the lapse of time due to his having run away. There, if any other is defeated by the dismissed litigant, then a special rule has been stated by the **Same Author**: "One who has been defeated owing to the texts for the *Hîna*, for such a one the wise prescribe a retrial; but one who has been defeated by his own statement, for him no retrial exists."

Yâjñavalkya,[2] however, states in regard to the detection of a faulty litigant: "He who shifts from (one) place to (another) place, licks his lips, whose forehead perspires, as also he whose countenance changes colour; (13); who has a stammering and incoherent speech, and talks inconsistently and too much, who does not respond to the speech or gaze of others, and who moreover, bites his lips; (14); who exhibits by his own movements a perturbation in mind, speech, body and action, is defective and unfit to be a complainant or a witness (15)." 'Lips' *i. e.* the ends of the lips; 'bites,' *i. e.* twists crooked; 'exhibits by his own movements a perturbation,' *i. e.* by his natural tendencies thus is reduced to deformity.

Manu[3] also: "From the aspects, the motions, the gait, the gestures, the speech, and the changes in the eye and of the face also, the internal (working of the) mind is assertained" *i. e.* of an offender. Thus for one

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1 स्ववाक्याजितस्य—**M. M. Kane** interpretes this as: 'is defeated in accordance with texts laying down that result'.

2 Book II, 13–15. 3 Ch. VIII. 26.

even though known to have a vitiated mind, there is no punishment, nor a dismissal from the suit in progress ; as these two have not been stated by the sages. Even the case of one who is not vitiated, by reason of a possibility of his having signs like these, and also because of the rule of caution laid down in regard to the texts describing a vitiated person, would in such a case not be rendered useless.

Those, moreover, who out of an apprehension of a defeat on a point, recede from the dispute before evidence has begun to be adduced, should be punished ; so says **Bṛhaspati** [1] : "Those (litigants) who make a private arrangement with one another, when the plaint and the answer have been properly entered, and the deliberation (for a decision) has duly commenced, shall be compelled to pay twice the amount in dispute as a fine". 'Make with one another,' *i. e.* in fraud of the king. Hence also **Kâtyâyana** : "Those (litigants) who after laying (their) information (in the court) mutually arrive at a compromise by receipt of payment of money, all these shall be liable for a double penalty, on account of a fraud upon the king."

Thus then for those who compromise without a fraud, there is no penalty. Hence also **Bṛhaspati** [2] : "When the plaint and the answer have been reduced to writing and the trial has commenced, the two parties may be welded together like two hot pieces of iron. (11) When both parties are in suspense there regarding (the approaching declarations of the) witnesses and judges, those litigants are clever who arrive at a mutual understanding while the uncertainty lasts (12). When the evidence is equally strong on both sides, and law and custom are divided, in such a case a mutual understanding between the two parties under the king's order is recommended." Those are clever who come to a mutual agreement before one (of the two) litigants is defeated on one point; this is the meaning.

Thus in the **Smṛtichandrikâ texts relating to disputes.**

1 Ch. V. 10. 2 Ch. V. 11–13.

PAGE 50* **The Part relating to Proof—Pratyâkalitapâdaḥ [1].**

The **Bṛhaspati** : "Those, however, who stand for proof, to one of these should be assigned the burden of proof by the assessors, after taking into consideration the reply." 'Of those,' *i. e.* of those who appear in the court of justice ; 'to one' *i. e.* to the plaintiff or to the defendant ; the 'burden of proof' *i. e.* by evidence, should be determined by the members of the Court ; this is the meaning. To that effect also **Kâtyâyana** : "After the plaint has been properly revised and amended, and a reply made free from any fault, it is desirable that the adducing of evidence should be caused to be done by the defendant or by the plaintiff even." The meaning is that either the plaintiff or even the defendant, whoever has to establish a fact, such a one, for the purpose of establishing that point, should write out the means of proof only after a proper Reply (has been filed). So also **Yâjñavalkya** [2] : "Thereafter, the plaintiff should immediately have written down the evidence by means of which the matter as alleged is (proposed) to be established." The meaning is that it is

1 प्रत्याकलितपादः—Lit. (प्रति + आकलित)—Introductory. Yâjñavalkya has declared a lawsuit to have four feet, or parts (चतुष्पाद्) (See II. 8 (2)). Of these, according to him, the first part treats of the *Plaint* (भाषापादः), the Second, the Answer (उत्तरपादः); the third, relates to the evidence and proof (क्रियापादः); and the fourth, the decision (साध्यसिद्धपादः). The present heading of प्रत्याकलितपाद would fall under the third *i. e.* the क्रियापाद. *Yâjñavalkya* has not assigned a separate place for this, and the reason has been explained by *Vijñâneśvara* in his Mitâkṣarâ on II. 8 (2). [See text at p. 10 ll. 3–5 ; and English tr. p. 678 ll. 1–6.] In substance, however, there is no difference. For after the pleadings have been placed on record, the nature of the pleadings would determine the questions as to the burden of proof, the right to begin etc. Thus, as has been observed in the *Mitâkṣarâ*, 'after the answer is received, the decision of the Councillors should be given as to on whom the burden of proof would lie'. After the framing of issues, which again depends upon the nature of pleadings [Cp. Civil Procedure Code Ord. XIV and also Ord. XVIII) the Right to begin and in particular sects. 101–14 of the Indian Evidence Act. Sect : 102 runs thus : 'The burden of proof lies on that party who would fail if no evidence at all were given on either side'. प्रत्याकलन by the Members of the Court would be as to on whom and to what extent would the burden of proof lie, and also when it would shift [See *Dharmakośa* Vol. I, Part I. p. 211, where all the views have been collected and summarised with a quotation from व्यवहारप्रकाश pp 78–79] Cp also *Bṛhaspati* प्रत्यर्थिनोऽर्थितो वाऽपि क्रियाकारणमिष्यते cited Sarasvati Vilâsa p. 105, and thereafter

> ये तु तिष्ठन्ति करणे तेषां सम्यौर्विभावना । कथयित्वोत्तरः सम्यग्दातव्यैकस्य वादिनः ॥

2 Boo II. 7.

only after the establishment of a Reply that the disputant who has to establish a point should exhibit the means of proof.

What is that (means of) proof? Anticipating this question, the **Same**[1] **Author**: "Evidence has been stated to consist of a writing, possession, and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence)". 'Ordeal,' such as the balance and the like. So also **Nârada**[2]: "Proof is said to be of two kinds, human and divine. Human proof consists of documents and witnesses. By divine proof is meant the (ordeal by) balance and the other (like) modes." The meaning is that the mode of proof by documents and witnesses and possession also is called human (evidence); as possession also is in relation to men. Hence also **Bṛhaspati**[3]: "Witnesses, documents, and inference also has been declared to be the human proof of three kinds." 'Inference,' *i. e.* possession, as it leads to an inference of ownership.

The balance and the like also have been pointed out by the **Same**[4]: "The balance, fire, water, poison, and fifthly the consecrated water; the rice have, moreover, been declared to be the sixth, the seventh the heated *Mâṣha*, the eighth has been stated to be ploughshare, and the ninth shall be religious merit; all these ordeals have been set out by the Self-born."

Other ordeals, however, have been set out by **Nârada**[5]: "(Swearing by the) truth, vehicle, and the weapons, cows, seeds, or gold also, as also (by) the Divinity, or the revered ancestors, by (religious) gifts, as also by meritorious acts." The word *cha*, 'also,' is intended to include others also, such as touching the head of the son and the like.

Moreover, these the balance &c., as also truth &c., by reason of their having been performed in the heaven by the Gods have acquired the designation of *divya* 'of the heavens,' and *daivika* 'of the Gods.' To that effect also **Pitâmaha**: 'Since these have been used by the thoughtful Gods in regard to the lotus fibres for the purification of each other, therefore these are known as *divyas* by designation. Here, it appears that by the force of the commencement, these are known as 'of the Gods' by regard to the name. By pointing out as the reason, 'used by the Gods,' by the force of the conclusion, it appears that they are caused in their originating in the heaven. 'Divyas by designation,' by reason of their being thus stated,

1 Book II. 22. 2 Intr. II. 28. 3 Ch. V. 18.
4 Ch. V. 4. Compare Nârada I. 252 (1). 5 Nârada I. 248.

thereby both by the literal and the sense meaning, by means of this clause the twofold designation of the balance has been stated, like as in the case of *Âjya*, because of its flowing [1] career.

The designation of these also as oath has been pointed out by **Nârada**[2] also: "The seven Ṛshis resolutely took an oath together with Indra in order to clear themselves mutually of suspicion, when each was suspected (by the rest) of having taken lotus-fibres". **Vyâsa** also: "The Oaths, affirmation by truth, balance, and the like are in proportion to the matter (involved)." As to what has been stated by **Bṛhaspati** viz.: "The balance and the like kinds of religious acts, are declared to be the divine evidence of nine varieties;" there the supplement to be remembered is 'by the Self-born,' as the Divine evidence comes to be of many varieties (when considered) along with the truth &c. stated in the Smṛti of Nârada. As for the separate mention of the ordeals and oaths by

PAGE 51* **Nârada**[3] viz.: "When a witness does not exist for men setting up a dispute, then one should investigate by means of ordeals, as also by the several kinds of oaths," that is with a view to point out that in serious cases, the word ordeal is (in) general (used), and not with a view to mention a difference in their meaning. Among the people these words are used as synonyms.

The expression 'when a witness does not exist' is inclusive by extension of the absence of written and other evidence (also), as **Yâjñavalkya**[4] has stated the ordeals in his Smṛti as to be in the absolute absence of human evidence of any kind whatsoever. And hence also, "When witnesses are available, a wise man should avoid the divine evidence; when available, and one employs divine means, he loses it," in this text of **Kâtyâyana**, the use of the word witnesses should be understood as an extended application of human evidence. Also "When a transaction has taken place during daytime in a village or a town, and when witnesses are available, divine proof is not admissible." in this text of **Nârada**[5] also, the mention of a transaction being made during daytime and the like, should be understood to be intended as a prohibition of a divine test when human proof is available. Hence also **Kâtyâyana**: "Even if the human proof adduced by the con-

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1 आजिगमनादाज्यं. Note the following passage marking out the distinction between आज्य and घृत the two forms of सर्पि. 'सार्पिर्विलीनमाज्यं स्यात् घनीभूतं घृतं भवेत्.

2 Ch. I. 244. 3 Ch. I. 247. 4 Book II. 22.

5 Intr. II. 29.

tending parties cover only a portion of the subject-matter, that should be accepted, and not the divine test, even if it cover in entirety (the subject matter)." The meaning is that when human evidence is available for only a portion of a particular point to be established, or for a portion of a particular attribute, the divine test is prohibited. Since, the **Same Author** also says: "That proof which, leaving aside the substantial point, would establish unsubstantial points even though many, one should give up as devoid of substance."

Similarly, of the contending parties, even if one agrees to accept either the divine or human proof as may be offered by the other party, if human proof is possible, that alone shall be the determinant, and not the divine test; so says The **Same Author**: "If one (party) adduce human evidence, and the other resorts to the divine test, in such a case, the king should accept the human, but not the divine proof." Thus the general rule is that when human evidence is absolutely unavailable, then is the divine one.

The **Same Author** states an exception to this on some occasions: "In trials concerning heinous offences of a long standing, or in the case of assaults, or slander, or concerning acts proceeding from violence, the ordeal itself are the witnesses." This rule of option, moreover, has a reference to other than secret offenders. There, human evidence being impossible, the rule of option would not be possible. Hence also has been stated by the **Same Author**: "Of secret offenders, perpetrators of heinous crimes, however, necessarily is the trial to be by ordeals; and by means of devices, marks, gestures, outward manifestations, and by the movements of their speech, eyes." The meaning is that in the case of secret perpetrators of heinous offences, however, on account of their mask on their face, their form not being noticeable. In the absence of devices, marks, and the like also, there should be the ordeal for them, and not merely on an absence of witnesses etc. only; and to point out this has the text been continued again.

Likewise, in the case of the perpetrators of the most heinous offences, even though openly committed, the trial is to be by the divine test only; so says the **Same Author**: "In the case of heinous offences of all kinds, one should conduct the investigation of the truth by means of ordeals, even though witnesses exist; so indeed (holds) Bhrgu."

In regard to disputes relating to debts, **Nârada**[1] states a special rule: "When, owing to the negligence of the creditor, neither a document, nor

1 Ch. I. 235.

witnesses exist, and the disputant also denies the (receipt of) money, for such a one a threefold procedure has been prescribed." 'The disputant,' *i. e.* one who has accepted the money. 'Procedure', *i.e.* the means for securing the money. That also has been pointed out by the

PAGE 52* **Same Author** [1]. "Demand at each period, continuance of past transactions, and the third an oath has been declared; by adopting these in order (the creditor) should secure (the amount)." 'At each period, a demand,' *i. e.* whenever the time for repayment had arrived, 'pay me my money,' thus for three, four, or even five times, a demand for repayment made in the presence of three parties and not contraverted by the other side—this is the first means. In the absence of that 'continuance of [2] past transactions,' e. g. at such and such a place, at such and such a time, whatever may be useful in reducing a particular money liability, in connection with that transaction the loan was taken by you, with this and the like, the second means. When that even is unavailable, the third mode is an oath ; this is the meaning.

This meaning, moreover, has been pointed out by the **Same Author** [3] also: "Although goaded on to his face, one who does not refute the demand, three, four, or five times, must pay the amount thereafter. Upon a refutation of the demand, however, one should treat him with the happenings regarding the balances of advances in connection with the place, time, matter, (mutual) relations, the amount, transactions and the like. If references to past transactions also be of no avail, then one should have it decided by the oaths only, by fire, water, religious merit and the like, appropriate to the place, the season and the capacity (of the party)."

Kâtyâyana also: "In regard to (a dispute about) a debt, the means of proof have been declared to be a document, or witnesses, or (evidence as to) the balance of (past) advance, or divine proof, out of a desire for the good of the people" Likewise, in regard to a dispute of any kind, says the **Same Author**: "By means of all the *pramâṇas* or by *hetu* or even by an ordeal, should the king make a decision in all (kinds of) disputes ; in the absence of all, by effort, and never on any account otherwise." **Vyâsa** [4]

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1 Ch. I. 236.

2 युक्तिलेशः—Dr. Jolly translates युक्ति as argument. It would appear that from the context here युक्ति has the sense of योजना—instrument, and लेश is 'remnant'. असहाय also explains as पूर्वदत्तस्य द्रव्यस्य पूर्वसंप्रतिपत्तिर्यस्य वा युक्त्युद्देशः.

3 Ch. I. 237–239.

4 The same text has been assigned to Kâtyâyana in Sarasvati Vilâsa, see p. 107.

states the meaning of the words *pramâṇa* and *hetu*: "Documents, witnesses, and enjoyment or possession have been stated to be the *pramâṇa* of three varieties; and the wise people know inference to be *hetu*, as also logical reasoning." In this way, the meaning in substance is, when proof is not possible by a visible means (of proof), an invisible means may be resorted to, and not otherwise.

Bṛhaspati says that at times even, if not proved by the visible, the invisible must not be resorted to: "In regard to the first [1] or the third, the means of proof may be divine or human; but for an answer of the fourth kind, the document evidencing success together with the witnesses." The import is that in an answer of a previous decision, by establishing either by witnesses or by the document of success, the disputant becomes successful (as) before. With this import also **Vyâsa** even: "In (an answer of) a previous decision, by the document of success, or likewise by (the evidence of) the Chief judge and the like the disputant secures success of what he had stated." 'Disputant,' *i. e.* the opponent, as in such case he is the party who has to prove the point in dispute. Hence also **Bṛhaspati**: "In the (answer of a) previous decision or of a confession and avoidance, the defendant himself should establish the answer: in an answer of denial, however, the plaintiff should establish his case as made out in the plaint." The meaning is that in an answer of denial, by reason of an absence of an admission, the plea made out in the plaint has the character of the point to be established, the contexts of the plaint, the plaintiff himself must prove. In the answer by a special plea, however, by the very admission of the statement in the plaint, the burden of proof being shifted, the plaintiff has not to establish the statement in the plaint, but moreover, the part of the statement in the answer which plaintiff has not admitted, *i. e.* the special plea, that itself is to be established by the defendant by means of proof. Hence also **Kâtyâyana**: "After admitting (the statement in the plaint), if the defendant set up a different (and) stronger plea, if that indeed is established and not the other, then he succeeds. Having admitted what was stated by the plaintiff in his first plaint, if the defendant set up in his plea another stronger, *i. e.* capable of crushing the statement in the plaint, such as payment back or the like, then that alone is to be established by him; by reason of a non-admission by the plaintiff,

1 According to *Kâtyâyana* an answer has four varieties; "By pleading the truth (सत्यं) admission or falsehood, (मिश्रा denial), admission or confession and avoidance (प्रत्यवस्कंदन), and former judgment (प्राड्न्याय)." Of these the 1st and the 3rd.

'not the other' *i. e.* the portion of the plaint admitted by the defendant, need not be proved by the plaintiff. The expression 'having admitted' is intended as an extended application; therefore, after stating that the averment by plaintiff is false, if a special plea is set up, even then the special plea is to be established, as **Hârîta** has stated: "Of the two answers viz. of denial and special plea, the special plea should be accepted as an answer."

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Likewise, in an answer by admission of the truth (of the plaint), neither of the disputants has to prove anything; so says the **Same Author**: "When, however, a former judgment and a special plea are set up, the defendant should exhibit proof; in a plea of denial, the plaintiff, but on an admission, that will not be necessary." The import is that the point to be established may be in the plaint as well as in the answer. Therefore, in the case of an admission, the judicial proceeding has (only) two parts. To that effect also **Kâtyâyana**: "In an answer of denial, it should be known to have four parts, in an admission and avoidance likewise, and in the plea of former judgment also: (but) has two parts in the pleas of admission." Thus, in the pleas of admission, there being an absence of the allocation of (the burden of) proof or the like, the judicial proceeding is brought to a close at the end of the answer itself. In this manner also it should be understood that in the answers of denial and special plea, there may be divine and human evidence; in the plea of a former judgment, human (evidence) only; in a plea of truth (of the plaint) none whatsoever. Hence also **Kâtyâyana**: "In (a case of) slander, and also (a dispute) about land, one should not prescribe an ordeal."

AN OBJECTION.

Indeed this Author himself has in a case of harshness of words, stated an ordeal, e. g. in the text.[1] "In cases of heinous crimes etc." (The answer is), True, it was so stated: but that has a reference to cases of extreme violence; while this has a reference to petty cases of harshness; thus there is nothing contradictory. 'Regarding land' is intended as indicating, by an extended application, an immovable. Hence also **Pitâmaha**: "In disputes regarding immovables the ordeals should be avoided; by witnesses, or by a writing as also of by (the evidence of) possession should these be established." Here, it should be understood that in the absence

1 See above p. 93 l. 16–29.

of human (evidence), by *hetu* should be the decision ; when that is not possible, (then) by the king's command.

So also, the **Same Author**, in regard to the rule of the ordeals at some places : " In accusations for heinous sins, as also for the misappropriation of a deposit, by the ordeals should the king investigate the cause, even if witnesses exist." **Kâtyâyana** also : " Where witness evidence is equally balanced, even there also, should one investigate by means of the ordeals. Also in a dispute regarding loss of life, even if witnesses exist, the complainant should resort to an ordeal ; in such a case, one should not interrogate a witness." **Bṛhaspati** also : " In regard to a document, as also in regard to the statement of witnesses, where a doubt is felt, as also an inference is doubtful, in such a case, the divine evidence is the clarifier." ' Inference ' *anumânam*, *i. e.* possession ; as also the employment of a burning faggot or the like. **Vyâsa** also : " This document has not been executed by me, it is false, and has been caused by another ' having (thus) discarded that document, the decision as to the fact should be by an ordeal." The meaning is that in regard to the point to be decided, one should make the decision by (a resort to) an ordeal. **Kâtyâyana** also : " Where a document is fraudulent, and where it has been reported to the king as such, in such a case the king occupying the seat of justice should decide by (a resort to) an ordeal." Likewise, the **Same Author** states the rules for investigation at some time by a document, at times by possession, and at times by witnesses, when possible : "Whatever has been reputed to be the established usage of the *pâgâs*, *śreṇis*, *gaṇas* and the like, of that the means of proof is a document, and neither an ordeal, nor also witnesses. In regard to the making and enjoyment of a passage through a door, a watercourse and the like, possession or enjoyment alone has preponderance, and neither a document, nor also witnesses. (Also) In regard to gifts promised and not given, and also for a decision by a master towards the servants in regard to rescission of a sale, or where having purchased (a thing), one does not wish to pay the price, or in gambling and prize-fighting, when a dispute has

PAGE 54* arisen, witnesses have been declared to be the means of investigation, and not an ordeal, nor also a document".

The settled rules of evidence thus stated must be carefully observed by the investigators: So says **Nârada** [1]: "Those invested with legal

1 Ch. I. 68. The original text in the *Nârada* Smṛti is as follows :
प्रमाणानि प्रमाणस्थैः परिकल्प्यानि यत्नतः । सीदन्ति हि प्रमेयाणि प्रमाणैरव्यवस्थितैः ॥
and the translation given above is according to the original reading in the Nârada Smṛti.

authority must pay strict attention to the (various) modes of proof. For indeed, things which have to be proved fail (to be established), if the prescribed modes of proof are not attended to". The meaning is that since those who (have to) adduce proof (are likely to) fail, therefore those expert in determining the burden of proof, should decide by whom, and which mode of proof, should be exhibited.

Here it has been stated by some wiseacres[1] that the exhibition of a document etc. is not (to be regarded as) a restrictive mode of proof in regard to immovables, but only as an ordinary mode, otherwise upon the loss of a document on some account, there would be an absence of a decision. That is not correct. Although it is restrictive, a decision may be reached by logical reasoning or under the orders of the king. Hence also **Pitâmaha** : "Where no document exists, nor (proof of) possession, nor even witnesses, in such a case an ordeal need not be resorted to ; there the authority is the king. Those disputes indeed of doubtful aspect which cannot be decided, for those, the king is the authority, since he is the overlord of everything". Hence also the visible and invisible modes of proof have been stated by **Vyâsa** : "In the absence of these, the wise men regard the king's order as decisive". The meaning is that when means of proof are not available inherently or on account of a (rule of) prohibition, a decision may be reacted by the king's command.

Thus in the **Smṛtichandrikâ** the part relating to the **adjustment of proof.**

Now the **Part relating to evidence. Kriyâpâdaḥ.**

There **Bṛhaspati**[2] : "After having heard the plaint and the Answer, the party for whom the proof is ordained by the councillors, that one should completely establish by means of documents and the like, what was stated on affirmation". 'Proof' *i. e.* evidence. **Nârada**[3] also : "When after the first complaint and the counterstatement have been completely reduced to writing literally in detail, the disputant in the third stage should demonstrate (it) by proof". 'The first complaint' *i. e.* the plaint ; 'The counter-statement' *i. e.* what is written by way of defeating the first complaint, in short, 'the answer' ; 'The third stage' *i. e.* the part relating to proof ; when in that, the evidence is the means (of proof). Thus, the meaning is this : After the three parts consisting

1 पंडितमन्यैः. 2 Ch. V, 2. 3 Intr. I. 24.

of the complaint, the answer, and the determination of the burden of proof, the plaintiff should 'demonstrate by means of evidence' *i. e.* establish his case by means of evidence.

Vyâsa states the meaning of the words 'case' (*Kârya*), and 'evidence' (*Kriyâ*): "The 'case' is said to be that which has to be established, while the means of (proof) is declared to be the evidence ; that, moreover, should be known to be of two varieties, 'human' and 'divine', likewise". 'Means' *i. e.* means of proof. **Bṛhaspati** [1] also states a division of proof : "Of two varieties, indeed, have been declared the means of proof, the human and the divine likewise ; each one (of these) has been (further) variously subdivided by sages conversant with principles". **Kâtyâyana** also : "Of five varieties may be the divine ; the human has been declared to be of three kinds". The expression 'Of five varieties' is not intended as restrictive, as other varieties such as the rice, heated coin, and the like have been noted in other Smṛtis ; while the expression 'of three varieties' is certainly restrictive, as there is no incongruity in other Smṛtis. Hence also the statement here is 'has been declared to be of three kinds'. As for what, moreover, has been stated by **Nârada** [2] : "Documents and witnesses also are declared to be the two methods", that is not intended as restrictive of the number, for were it so, there would be the incongruity of contradiction with his **own text** [3] viz. "Documents, witnesses and possession, are declared to be the two traditional modes of proof". Therefore it should be understood that the **text** 'are declared to be the two traditional means' has been stated for indicating that the plural number is intended as applicable for the two [4] others.

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Thus in the **Smṛtichandrikâ the Part relating to Proof.**

1 Ch. V. 17. 2 Intr. I. 3. 3 Ch. I. 69.

4 बहुवचनमितरयोः इति वक्तुं—With a view to express that the plural number is in regard to the other two *i. e.* लिखित and साक्षिणः. The meaning is, the orbit of भुक्ति is very limited, not large ; while documents (लिखित) and witnesses (साक्षिणः) have a wide range to cover. Therefore, although the text says 'two rules', the meaning intended is the two rules being (1) लिखित and the other (2) साक्षिणः prominently in view, भुक्ति having a very small orbit, is of little importance to count as a major rule. 'द्वौ विधी' is not to be taken therefore as a restrictive or limitative expression. द्वौविधी *i. e.* two prominent means generally to be resorted to. Therefore the fact is that the means of proof are three, but of these the two having a preponderance over the other *i. e.* the third, and therefore a wider orbit, द्वौ विधी has been stated as merely indicative and not restrictive.

Now the **Consideration of Documents—Lekhyanirûpaṇam.**

There **Vasiṣhṭha**[1]: "The Common and of the king; thus one should know a document to be of two characteristics". *i. e.* 'Common' *i. e.* of the people. So also **Saṅgrahakâra**: "The Royal and of the people, (thus) of two varieties has a document been declared". There, the royal, on account of its divisions such as 'an edict' and the like is of four varieties; so says **Vasiṣhṭha**[2]: "An Edict (*Sâsanam*) should be known to be the first; 'a decree' (*Jayapatra*), likewise the next; 'a mandate', (*Âjñâpatra*), and a general 'ordinance' (*Prajñâpatra*); (thus) the Royal is of four varieties".

There, by way of expounding (*Śâsana*) 'an edict,' says **Yâjñavalkya**[3]: "After having made a gift of land, or having created a corrody, the king should have a document drawn up for the information, in future, of good kings who may come on." 'Corrody,' that property which is received under a royal document as the result of an arrangement by those carrying on trade and the like transactions to the effect that 'every year or every month some amount should be given to this Brâḥmaṇa or to this Deity.' Here, although the donation of money is by the one carrying on trade and the like, still the merit goes to the creator of the corrody alone, as the other proceeded to act with that object only. The word 'land' is used as indicative, by an extended application, of a village, (pleasure) garden, and the like. Hence also **Bṛhaspati**[4]: "After having made a gift of land and the like, the king should cause a Royal grant to be made according to law, on a copper-plate as well as on a (piece of) cloth containing the home of the place, the family, and the like." "Should cause to be made," *i.e.* by him (the officer) who brings about peace, war and the like; it being the rule that that (officer) alone has the capacity for making such a document. To that effect also **Vyâsa**: "The writer of the peace and war (documents), when commanded by the king himself, should write out the king's command on a copper-plate or a cloth, reciting the connection of the act and its cause, and containing a

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1 See Appendix–Quotations from Vasiṣhṭha Verse 10.

2 See Verse 16. The four varieties of written orders issuing from the king are (1) the *Śâsana* शासन, (2) the *Jayapatra* (जयपत्र), (3) the *Âjñâpatra* (आज्ञापत्र) and (4) the *Prajñâpanâpatra* (प्रज्ञापनापत्र), Cp the Imperial Constitutions (*Principium Placita*), of the Roman Law, viz. (1) *Epistolæ* with *Mandata* and *Rescripta*, (2) *Decreta*, and (3) *Edicta*.

The *Jayapatra* 'a certificate of success' which is translated here as *a decree* also includes *a hînapatra*, 'a certificate of defeat' as will be seen from the definition of *Jayapatraka* as given by *Vṛddha Vasiṣhṭha* [see Mitâkṣharâ on Yâjñ. II. 91. (Collection Vol. II. p. 902. ll. 25–30 and note (4)].

3 Âchâra 318. 4 Ch. VIII. 12.

brief description of the property and of the Act." A command which contains a (recital of the) connection of the Act and its motive cause ; one of that description. 'Containing a brief description of the property and the Act,' *i. e.* accompanied with a brief statement, from the beginning, of the transaction. **Yâjñavalkya** [1] states the matter to be caused to be written on the copper plate and the like : "Having caused to be written (the names of) his own ancestors as well as 'himself' the lord of the earth, the extent of the accepted donation, and a detailed description of the donated property." In the beginning having caused to be written out in consonance with usage the (invocation of the) blessings of the Lord of prosperity having the body of the (great) boar who had lifted up the entire earth, as bestowing a boon; ' his own ancestors', the three in respective order *i. e.* the great grandfather, grandfather, and the father by name, introduced by a description of their qualities, such as bravery and the like, and himself the fourth, the extent by measurement, and of the accepted donation. That which is accepted as a donation is an accepted donation ; the land etc., the corrody also ; the measurement of that *i. e.* the extent ; ' Extent of the accepted donation, *i. e.*, the boundaries of the land etc. to be donated. **Vyâsa** also : " Containing the year, the month, the half of it, and the name of the king ; the caste of the acceptor of the donation, together with the gotra and the scholastic name." The meaning of the latter half is

PAGE 56* that such (things) should be caused to be written as would enable a complete identification of the donated property ; and the caste, family, the scholastic branch and the like also : Likewise, the **Same Author** also states other things also to be caused to be written : " The place, the family ancestry also, the country, the village connected, the Brâḥmaṇas and others also respected and holding authority, one should write; the members of the family, prominent members of the writercaste, servants, and doctors, (extending) as far as the *mleñchha*, *chaṇḍâla* and the border men, addressing all (thus) : "For (securing) the religious merit of the mother, the father, and of oneself also, to one the son of such and such, this gift has been donated by me to such and such a one the co-student (of such)." **Bṛhaspati** also : " Irrevocable, unrecoverable, irrespective of whatever may occur in future, (continuing) equal in extent in time to the moon and the sun, and descending hereditarily to the son, grandson and their descendants, maintaining the heavenly abode for the donor, and the preserver, and involving hell to the person taking back, one

1 Âchâra 319.

should write sixty-thousand years as the extent of the donation, and for interrupting it, *i.e.* the supplement is, for the information of the future kings and the like. Hence also **Vyâsa** : "Sixty-thousand years, as also the effect for interrupting the donation, the king should write for the information of the succeeding kings (in future)." Likewise another verse also to be written has been recited by the **Same Writer** : "This embankment of religious merit is (for the) common (benefit) for all kings, (and) should be protected at all times by your honours, (the humble) Râmabhadra again and again requests all those future lords of Earth." Thereafter, the king should himself write out his own hand ; for the **Same Author** also says : " The site, and the measurement also, as also his own hand, he should write himself." The meaning is that one should write himself (then) : "What is written above has the ascent of such and such a king, the son of such and such a one."

The writer also should write his own name ; for the **Same Author** also says : "One who brings about peace and war, and one who also is the writer, being duly commissioned by the king himself, such a one should write the Royal Edict ; his own name, however, he should write and afterwards, imprinted with the Royal signet ; such shall be the Royal Edict regarding a village, field, house and the like."

This, moreover, should be delivered over to the acceptor of the donation, as it would be useful to him. Hence also **Vishṇu** [1] : "Either on a (piece of) cloth or on a copper-plate, written and marked with one's own signet, he should deliver over for a proper information of future kings". The **Saṅgrahakâra** also: "A Royal Edict shall contain the mark of the hand of the king himself, and the Royal Command, the name of the king, shall be imprinted with the Royal signet, in one's own script, not couched in bad words, with the letters and syllables complete, and delivered by the king by the writers of peace and war." The meaning is that written by the writers of peace and war in the manner as aforestated and delivered to some other shall be the Royal Edict or Grant. This Edict, moreover, is not with a view to establish the donation, as that is accomplished by the acceptance itself, but is intended to make firm what was donated, as it is by putting on a firm basis (alone) that it has been stated to yield an imperishable result. For : "As long as his mighty fame obscures the heaven and Earth, so long does he, the meritorious, reside in the abode of Gods." With this import also has been stated by **Yâjñavalkya** [2] : "Bearing his own autograph and the date, he should cause the Royal Edict to be made in

1 Dh. S. Ch. III. 82. 2 Âchâra 320.

perpetuity." 'Bearing the date', *i. e.* containing the donation particularised by the (name of the) year and such other particulars. To that effect also **Vyâsa**: "This 'has been understood by me' so written by the donor, containing important words, and likewise imprinted with the (name of the) year, month, its half, the day and the
PAGE 57* Royal signet. In this manner should one write the document containing the Royal Edict."

Similarly, the **Same Author** proceeds to discuss a Decree [1] (or document of success): "Having himself investigated the disputes, or upon the report from the Chief Judge, thereafter the king should give a decree for general information."

To whom should he give? Anticipating this question, the **Same Author** says: "One by whom the (right to) movable as well to the immovable (property) has been established to be his by means of evidence, who was placed in a doubtful position on account of an allegation in regard to a portion, and duly comes out successful, to him should be given by the king the Decree duly confirmed." **Bṛhaspati** [2] also: "Preceded by the first and the final pleading and concluded by the decision, when a king gives a writing to the successful party, that is stated to be the Decree or (*Jayapatra*)." 'Preceded by the first and the final pleading', (this expression) is indicative by implication of a concluded trial. Since says the **Same Author** [3]: "What had taken place in the judicial proceeding, such as the first complaint, the Answer and the like, followed by evidence and the decision, all that should one write in the *Jayapatra*." **Vyâsa** also: "The first Complaint, the Answer, the part relating to proof, the detailed consideration of these, oral evidence, the Smṛti Texts, a decision reached in concordance with the assessors, one should write all this collectively and briefly in the *Jayapatra*." 'The part relating to proof', *i. e.* the part where the proof is sifted and examined, in short the part known as the *Pratyâkalita*, or the part in which the burden of proof is determined. 'Oral evidence', *i. e.* statements of witnesses; 'concordance with the assessors', *i. e.* without transgressing the assessors; 'briefly', *i. e.* in a shortened form.

Kâtyâyana also: "The statements of the plaintiff and the defendant, the affirmation, the statement of witnesses likewise, its decision also as was determined by himself, this should be written distinctly entered in the respective order in the document." The expression 'in respective order' has been expounded by the **Same Author** also: "The statements of

1 जयपत्र—see note on page 100 above. 2 Ch. VI. 4. 3 Ch. VI, 3.

the complainant and of the person complained against, should first be entered; of the assessors, of the Chief Judge or of the *kulas* thereafter; the decision (based upon) the principles of laws and the opinion should be caused to be written there also." The recording of the opinion, however, is by one's own hand, as the writing of the opinion in another's hand has already been ordained before in the text: 'And as was determined by himself.' Hence also has it been stated by the **Same Author**: "Plaintiff should be duly invested with the right which was established (by him), and be commended (for his success), while the king should deliver the document containing his own hand; and the assessors also as were present there, knowing the *smṛtis* and the *śâstra*, as in the case of a document, so here also should be made to write their own hand." The meaning is that the king should cause these assessors to give the *Jayapatra*, just like the people's document. **Vṛddha Vasiṣhṭha** also: "Upon the establishment of his right, one should give to the successful among the two disputants the *jayapatra* or the decree having the imprint of the hands of the Chief Judge and the rest, and sealed with the Royal signet." The *jayapatra* as thus described, is known as *Paśchâtkâra*; so says **Kâtyâyana**: "A document prepared in this mode, the wise know as the *Paśchâtkâra*." This *Paśchâtkâra*, moreover, is a particular variety of a decision only, and not in all cases; so says the **Same Author**: "Where the (burden of) proof has been discharged by a disputant by means of evidence only, in such a case has been ordained to be given a *Paśchâtkâra*, and not in all (cases)." 'Proof' *i. e.* the point to be established. By stating that 'by means of evidence only,' the Author says that a trial with the four parts alone can have a *Paśchâtkâra*, and not a trial with two parts. Moreover, this has been made clear by **Bṛhaspati**[1]. "If a party establishes the point at issue in a trial with the four parts to success, a *jayapatraka* containing the Royal signet is contemplated." In a

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trial with two parts however which contain the Plaint and the Answer, the *jayapatra* is certainly there; since the (particular variety viz. the) *Paśchâtkâra* alone is prohibited there. Another (variety of a) *jayapatra* has been stated by the **Same Author**: "That which is given to others than a defeated or a false litigant or the like, and which is completed by a narration of actual facts, that also is called a *jayapatraka*." 'To others' *i.e.* the meaning is litigants who have[2] not been defeated.

1 See Ch. VIII. 19.

2 अहीनवादिनाम्—another reading is हीनवादिनाम्—which does not fit in with the context

The *Âjñâpatra* (mandate) and the *Prâjñâpatra* (an ordinance) these two have been pointed out by **Vasiṣṭha**[1]: "That by which some duty has been ordered to be performed by the feudatories, servants, the national guards, and the like, that is called an *Âjñâpatra* (mandate). That by which a duty is communicated to the sacrificial priests, the chief officiating priests, the preceptor, as also to those who are entitled to (be treated with) respect, is the document issued for their information." **Bṛhaspati** mentions even another royal 'deed of favour' called the *Prasâda-lekhya* "Where a king being pleased with the service, bravery etc. (of the donee), proffers a region or the like by means of a document, that indeed is a a *Prasâda-likhita* (deed of favour)." Therefore the statement that a Royal document is of five varieties or of four varieties should be regarded as made through inattention.

The peoples' document has, moreover, been explained by **Vyâsa**: "The well known[2] local writer should write out a people's document, containing the (names of the) royal family in their order, and the year, month, half of a month, and the day." *i. e.* containing (these) is the context. 'Day,' *i. e.* the day (of the week). Other (details) also should be caused to be written; so says the **Same Author**: "One should write the name and the caste of the creditor and the debtor preceded by the father's, the variety of the property, as also the quantitative measure, and the rate of interest as agreed to by both." The expression 'agreed to by both, &c.' is qualitative of the property and the like also. Hence also **Yâjñavalkya**[3]: "In every transaction where an amount has been agreed to by mutual consent, there should be made a writing about it with (the attestation of) witnesses (thereon), and preceded with the creditor." 'Preceded with the Creditor,' *i. e.* with the name of the Creditor. 'With witnesses', *i. e.* containing the names of persons who are intermediaries and conversant with the transaction or the amount agreed to. Similarly, as many particulars should be and entered into the document as may be helpful for a definite appreciation, as to the time, the creditor, the debtor, the witnesses, and the like. So says the **Same Author**[4]: "Containing among other things, the year, the month, half of it, the day (of the week), the castes, and the names of their own *gotra*, as also the scholastic title, and the names of self and father." 'The scholastic title', e. g. '*Kaṭha* of

1 Appendix Verses 17-18.

2 प्रसिद्धस्थानलेखकः *i. e.* the officer whose function is to write out documents regarding places of importance.

3 Book II. 84. Collect p. 891

4 Book II. 85.

the Ṛgveda' and the like qualifications in connection with the (particular) *S'âkhâ*. The father's name of oneself, as also the father's names of the creditor, and the witnesses. By the use of the expression 'and the like' are included the relatives, the day etc. according to the usage of the country. Hence also **Vyâsa** : "In accordance with the usage of the country containing the transaction, the loan, the acceptance." 'The transaction according to the usage of the country', *i. e.* it should be done in pursuance of the local usage. 'The loan' *i. e.* the advance. **Nârada** also: "A document, moreover, should be caused to be made with witnesses on, which is not in disregard of the rules about the sequence of ideas and words, which is in conformity with the state of the usage in the country, and which is perfect in all particulars". **Vasiṣhṭha** [1] also : "Having entered (in it) the time, the king, the place, the residence also, the transferor, and the transferee, and containing the father's name, the caste, one's gotra, the *S'âkhâ*, the money etc. with the quantity, the interest, the signature of the transferee and the witnesses also cognisant of the contents." **Yâjñavalkya** [2] : "After the contract has been completed, the debtor should enter his name with his own hand (at the end) with the words, "what is written above has the assent of me the son of such (and such) a one." By saying 'above', the Author points out that after the words (stated) before have been written, below these should be placed the words in his own hand; (the word) 'Debtor', is intended as indicative of witnesses also. To that effect the **Same Author** [3] also : "The witnesses also, should subscribe in their own hand their fathers' names before theirs, thus, ' here, so and so am a witness' ; these witnesses should be equal". Those who have been entered here in the document as witnesses, these also should each write, ' so and so the son of so and so, a witness in regard to such and such a matter.'

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These, moreover, should particularly be even in number, such as two and the like, and not uneven in number, such as three or the like. The rule as to the number of witnesses has been indicated by some one contrarily by assuming an [4] implied negation. That should be ac-

1 See Bombay Sk. Series Appendix p. 85. Verses 23, 24. also Vîramitrodaya and Aparârka. This passage is not in the text as printed; but I. 136 contains a similar provision. Cp. Yâjñavalkya also Book II. 85.

2 Book II. 86. 3 Book II. 87.

4 अकारप्रश्लेष—*i. e.* between the word ते and सम्मः. Thus according to this view the text should read तेऽसम्मः This sign is called अवग्रह, so that when the clause is split into पद्स or syllables, it should read ते असम्मः.

cepted only in a region where the usage is like that alone ; not elsewhere, as it would be incongruous. The plural number in the expression 'witnesses', is in reference to a matter (which is) very important. The debtor, the creditor, the two witnesses, and the writer likewise, a document should be made with (the writings of) all these together, and not otherwise", since in this text, two witnesses have been stated by **Hârîta** in all kinds of documents. In this way, moreover, in a document prepared by another, as there are five persons viz., the debtor, the creditor, the two witnesses, and the writer, it is a document with five entered in it. This is the practice among the people. When, moreover, the number of witnesses is larger, such a transaction should be understood to be of a minor character.

In regard to documents of all kinds whatsoever has been stated by **Vyâsa** also : "The debtor, his hand together with his name, together with two witnesses with the (name of the) father." Therefore, the rule about even number, such as two and the like should be resorted to without (any) conflict with the usage of the country.

When, however, a witness or a debtor is illiterate, then says **Nârada**[1] : "Where a debtor is illiterate and so also the witness (who is illiterate), he should cause his declaration to be put in writing by another witness in the presence of all the witnesses. One knowing a foreign script should also write himself alone, as he knows the script, vide this Smṛti of **Kâtyâyana** ; "All the scripts of the people should be entered into a document."

After the autograph of the witness, says **Yâjñavalkya**[2] : 'Being desired by both (the parties), this was written by me so and so, the son of so and so', thus at the end (of the document) should the writer then subscribe". **Vyâsa** also : "The writer should subscribe at the end thus : 'By me, so and so, the son of so and so, requested by both (the parties)—his own name in his own hand'." This is the rule regarding a peoples' document as stated by **Vyâsa**. 'At the end', *i. e.* of the document.

A document thus described is of eight varieties ; so says the **Same Author** : " An ancient document (*chîraka*), a document in one's own hand (*svahastam*), likewise that which is called (*upagata*) an acknowledgment or receipt, a document of pledge (*âdhipatra*), is the fourth ; the fifth is a sale deed (*krayapatraka*), the sixth is known as a document of usages

1 Not found in the published edition (see however Mitâkṣharâ p. 894. ll. 24–27).
2 Book II. 88.

(*sthitipatraka*), the seventh is the document of peace (*sandhipatraka*), and the certificate of purification (*Viśuddhipatraka*), thus a people's document (*Laukika*) has been declared to be of eight varieties." Here the number is not intended to be particularly stressed, as a (*vibhâgapatra*) document of partition, and the like also, are (regarded as) peoples' documents.

There, the **Saṅgrahakâra** states the characteristics of the ancient document (*Chîraka*): "A document is called ancient (*chîraka*), which is written by ancient writers of the town, nominated by the plaintiff and the defendant, regarded as the best available, with their own names preceded by the names of the fathers and the like, containing the names of each of the plaintiff, the defendant, the witnesses, and (the signatures) in the hands of the plaintiff, the defendant, and the witnesses, containing clearly the information, with characteristics as stated in the smṛtis." 'Regarded as best,' *i. e.* highly praised.

Kâtyâyana, moreover, describes the document in one's own hand (*svahasta*): "That which was written by the acceptor in his own hand, and which is without any witnesses, that is known as a 'document in his own hand,' and declared by the wise as (good) evidence." In the same manner, a document written by the giver, and acknowledged by the acceptor, should be known as a document of acknowledgment (*abhyupagata*). **Nârada** [1] states a document of pledge (*âdhipatra*): "Where after accepting a pledge, the owner lends his own money, the document which is executed at that time, that is called a document of pledge."

In the case of a document for a second pledge, **Prajâpati** states a special rule: "When the creditor creates another pledge with the same money, (then) having executed a document of that pledge, he should deliver back to him the first document."

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A sale deed (*krayapatra*) has been stated by **Pitâmaha**: "When an article is purchased, that which is executed for the publication of the purchase by the seller and assented to by the purchaser, should be known as a sale deed (*krayapatraka*). The documents of usage (*sthitipatra*), and others have been stated by **Kâtyâyana**: "The document which is intended as evidencing the usage of men versed in the four Vedas, of a town, of corporations, of guilds, and of the inhabitants of a town, is called the document of usage (*sthitipatraka*). That document which records what happened at an accusation made before all the best of

1 Not found in the published edition.

the people, is called the document of peace (*sandhipatraka*). When an accusation has been got over after an expiation was performed, the document which is given by the people attested by witnesses is called the document of purification (*viśuddhipatraka*)."

Bṛhaspati [1] also mentions the divisions of documents: "A document of partition, gift, purchase, pledge, agreement, bondage, debt, or of like (transactions); (thus) of seven varieties are Peoples' documents; the royal edicts are of three kinds." Here also no (particular) number is intended to be stated, more documents than these having been pointed out; hence also the expression 'and the like' has been used; otherwise, the seven-fold varieties having been established by the enumeration itself, the use of the expression 'and the like,' would be meaningless. By that alone, this is understood, that the number of (the kinds of) documents is not intended as restrictive. Therefore, there is no contradiction with the texts containing various enumerations.

The **Same Author** [2] expounds the document of Partition and other kinds: "When brothers become mutually divided according to their own wish, and make a deed of division, that (document) is called a Partition-deed. When after having made a grant of land, one executes a deed wherein he makes it endureable as long as the sun and the moon continue, and to be irreducible, and unresumable, it is called a Donation deed. When after having purchased a house, a field, or other (property), one causes a document to be executed containing an exact statement of the proper price paid for it, it is called a Purchase-deed. When, after having given as security movable or immovable property, one executes a deed stating whether the (pledged) property is to be preserved, or used, that is called a Mortgage-deed. When (the people of) a village or province execute a deed of mutual agreement, (the purpose of) which is not opposed to the interests of the king, and which is for the purpose of *dharma*, that is called a deed of Agreement (*Samvit*). Being reduced to destitution in regard to clothes and food, when one executes in a wilderness a document stating 'I will do your work,' that is termed a deed of Bondage (*dâsapatra*). When after having taken money at interest, one himself executes a deed, or causes it to be executed, that is called by the wise, a Debt-bond (*ṛṇalekhya*)."

Kâtyâyana also mentions another *laukika* or Peoples' document: "When a boundary dispute has been decided, a document specifying the

1 See Sacred Books of the East Vol. XXXIII. p. 304. Ch. VIII. 4.

2 Chapter VIII. 5–11. p. 305.

boundaries has been ordained (to be executed)." **Yâjñavalkya**[1] also: "After having paid the debt, the document should be caused to be torn or another should be caused to be made for (evidencing) the acquittance."

Marîchi states the occasion for a document: "Upon a sale or mortgage of immovable property, as also upon a partition, or of a donation also, one should secure a completion (of the transaction) by a document, and an avoidance of a disagreement also". 'Mortgage', *i. e.* pledge. The first word, moreover, is intended to include property dealt with in a transaction of loan or the like. 'Avoidance of a disagreement', *i. e.* even after a lapse of time, the transaction entered into should be placed above dispute.

Thus, moreover, in regard to immovable property and the like, having completed an indisputable transaction, the details as to the royal family and the like other matters may be entered or deleted; since these have a visible purpose; therefore in a document of gift or the like, the creditor, debtor etc. need not be written; nor also in a document of payment of a debt etc., the acceptance of a donation etc. In this way, in other documents also should be understood what is to be written; for a document has a visible purpose.

Hence where a document the contract under which has not been performed, becomes incapable of enforcement or is destroyed, another document must necessarily be got executed. Therefore also says **Yâjñavalkya**[2]: "If a document is in another country, or is badly written, or is lost, so also if it is stolen; likewise if it is torn, burnt, or cut asunder, another should be allowed (by the authorities) to be made (in its place)". 'Is in another Country', *i. e.* lying in a place from which it is absolutely impossible to be brought over; 'badly written', *i. e.* the letters in which cannot be deciphered; 'torn', *i. e.* cut into two; 'cut asunder', *i. e.* tattered.

Kâtyâyana also: "When a document is broken by dust, is burnt, or has holes formed in it, or has passed away,
PAGE 61* another document should be got executed, also when it has been blurred by perspiration". 'Passed away,' *i. e.* misplaced or taken away; 'blurred,' *i. e.* wiped off.

As to what, moreover, has been stated by **Nârada**: [3] "When a document has been placed in another country, or burnt, or badly written, or stolen, time should be allowed if it exists still; if it be not in existence, the

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1 Book II. 94. 2 Book II. 91. 3 Ch. I, 142.

evidence of those who have seen it, decides the matter," that has a reference to a debtor who is prepared to pay off the amount at that very time ; for in such a case, there is no purpose in making another document. Giving of time is for the purpose of the document being brought over, the determination of an adequate time ; for the ' evidence of those who have seen it ' *i. e.* the meaning is, the knowledge of those who had seen the contents of the document, with the object of proving the amount; that should be done. This, moreover, even when it is not possible for the document to have been torn, it should be done with a view to dispense with the evidence of witnesses. So also by way of publishing the payment back, a document of repayment should be taken. If, however, the money, is to be paid back after an interval, another document should be got made. Hence also has it been said by the **Same Author** [1] : " If a document is split, or torn, or stolen, or effaced, or lost, or badly written, another document has to be executed ; this is the rule regarding documents."

Thus in the **Smṛtichandrikâ** the **discussion** about **Documents.**

Now the **Examination of Documents—LekhyaParîkṣhâ.**

There **Kâtyâyana** : " The king having issued summons [2] for evidence, should examine, according to the rules of justice, documents in accordance with the custom about documents, and witnesses in accordance with the usage about witnesses." 'Custom about documents,' such as distinct letters, sentences, and the like. That also has been pointed out by the **Same Author** : " A document which contains a proper formation of letters and sentences, which is unambiguous, in which the letters are clear, which is not wanting in the order of the marks and the stops, attains validity." *Kriyâ*, ' form' *i. e.* proof ; ' mark,' *i. e.* the signet ; that is in the Royal grant only.

To that effect **Nârada** : " A document which contains the king's own hand, and also is marked with his signet is declared a Royal document, which is (regarded as) evidence in (regard to) all matters." So also the **Same Author** [3] says in regard to a peoples' document : " A document, however, has been declared to be of two sorts, written in one's own, or in another's (hand) ; unattested [4] or attested ; the validity of both is according to local usage." The meaning is that the validity of both these kinds, depends upon local usage *i.e.* in accordance with the custom of the country.

1 Ch. I. 146. 2 क्रियां समाहूय. another reading is राजाज्ञया समाहूय. 3 Ch. I. 135.

4 When in one's own hand it need not bear attestation ; while the other requires it.

In regard to the document written in his own hand, however, **Yâjñavalkya**[1] states a special rule : "Even though without witnesses, a document which is in one's own hand, all that is regarded as evidence, except when it is caused by force or fraud." From the use of the word even, in the expression 'even though' it appears that a document in one's own hand even may be attested. That written by another, however, can be evidence only if it is attested. To that effect, moreover, **Pitâmaha** : "Consented to by the two disputants, and bearing the attestation of the writer, such a document is regarded by the wise as (good) evidence in all matters." **Kâtyâyana** also : "That which is in accordance with local usage, which contains the year, month, fortnight etc. and the rate of interest, and is marked by the hands of the debtor, the witnesses, and the writer, is called a document".

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The use of the word interest is indicative, by implication, of a pledge. Hence also **Nârada**[2] : "That which is not adverse to the custom of the country, the contents of which answer to the rules regarding pledges (and other kinds of security), and the sequence and letters in which are unobscured, such a document is regarded as (good) evidence". 'Distinct are made in which the rules about pledges', *i. e.* about the procedure regarding a pledge, such a document, of this aforestated kind. The meaning is that that document which is in accordance with the condition of the sequence and the letters being unobscured, that is evidence *i. e.* even after a lapse of time will yield knowledge about real facts. It is obvious that that which is not of this character is no evidence.

Still also with a view to clarity, says **Kâtyâyana** : "When, however, the letters in it are fallen away from (their proper) place, are not in the (proper) line, are ambiguous, and are deflected from their characteristics, and are so placed, that document should be regarded as a false document. Also that which is opposed to the custom of the country, which is ambiguous, which is devoid of (the proper) order, and which was executed not by the owner, is vitiated, as also which does not contain the matter in hand."

Hârîta also : "That, moreover, which has been full of (the marks of) the crows[3] feet, such a document may be regarded as invalid ; as also the composition of which is devoid of the dots (*bindu*) and cross-marks (*mâtrâ*),

1 Book II. 89. 2 Ch. I. 136.

3 काकपद *i. e.* full of correction marks like (∧) such marks are made when any addition or correction is to be introduced into a document.

as also that which is torn". **Bṛhaspati** [1] also : "That which looks fresh (though) executed a long time ago, and dirty, or intended for a very short period only, which is torn, or has its letters blurred, such a document shall be regarded as invalid. A document will not be held valid which was executed by a dying individual, or by an infant, or by one under a terror, or one under the influence of vice, or (executed) at night, under deceit, or compulsion". **Nârada** [2] also : "That which was executed by one intoxicated, or under an influence, or by a woman, or by a minor, or under compulsion, such a document will not be regarded as evidence, as also that which was made under suffering, or by an intoxicated person or by one under fear or fraud". **Kâtyâyana** also : "A document which was executed by one intoxicated, or by one under fear of an obstruction, as also by a lunatic, or by one under trouble, and that which was executed by women, minors, or by persons not independent, will not be regarded as valid." The collective sense of the texts of **Bṛhaspati** and others is that what was done by a dying person or the like, will not be admitted as reliable evidence on account of a suspicion about their genuineness.

In a similar manner, a defect in witness evidence will not be regarded as reliable evidence. To that effect also **Vyâsa** : "Where a witness has been entered who is tainted or is vitiated by his acts, that document is declared as invalid, or even where the writer also is of such a character". **Kâtyâyana** also : "A document may be (regarded as) invalid on account of a defect in the witness, or of the writer, or on account of the fault even of the creditor, as also of the debtor".

Here, those faults which are concealed, should be declared by the disputant ; those, moreover, which are apparent, by the members of the Court ; so says the **Same Author** : "Indeed those faults which exist in the evidence should be declared by the disputant ; while the apparent ones, by the members of the Court at the time by pointing to the rules of law". 'In the evidence', *i. e.* in that which was declared as evidence ; 'at the time', *i. e.* at the time of the investigation. The faults which, however, are declared after the lapse of (the proper) time, do not come in the way of their evidentiary value ; so says **Bṛhaspati** : "Whatever defects in the documents, as also in the witnesses, have been stated in the Smṛtis, must be declared at the time (of the investigation) of the dispute ; if declared afterwards, these should not invalidate". The meaning is that those which are

1 Ch. VI. 25. 2 Ch. I. 137.

declared afterwards *i. e.* after the conclusion of the examination of evidence, one should not invalidate.

Kâtyâyana states the manner in which secret faults may be expressed : "The faults should be so declared that the witnesses, the writer, and the executant may be found to be false; a document becomes invalid when these are vitiated." Or, it may be brought out that it was not written by the writer whose name it bears, or seen by the persons whose name it bears as witnesses.

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So says the **Same Author**: "It was not written by the writer, nor likewise was it seen by the witnesses, when such declaration is made by the defendant, the document is declared to be false." 'Declared,' *i. e.* as a fact. For, the **Same Author** again : " Not by an averment (merely) that it is false, but by the defect alone should evidence be attacked as faulty ; for a false accusation, a party becomes amenable to punishment, and he loses his cause also."

In this manner if the faults as pointed out by the accusing party disputant are found to exist, those defects, the president of the court should communicate to the other side; to that effect also the **Same Author** : "In this manner where a document has been challenged as invalid before the king, it should be considered, and after having deliberated along with the Brâhmaṇas, one should investigate into the faults of the document."

There, if these defects are not removed by the other (side), then the document is (regarded as) invalid ; if removed, it is (to be regarded as) not invalid ; so says the **Same Author**: " That by which the witnesses, the writer, and the executant become vitiated, by the same cause is a document regarded as invalid ; if these are faultless, one may declare its validity."

In regard to a document which has not been admitted, the validity is, however, established by the consent of the debtor ; if not, not ; so says the **Same Author** : " A document written by the creditor in his own hand without a witness, becomes invalid if the writer does not prove it to be (properly) executed." The meaning is that if the writer (*kartâ*) *i. e.* 'the creditor' 'does not prove' *i. e.* does not establish that it was written under the consent of the debtor, then a document repudiated by the debtor saying 'I do not know,' is regarded as invalid.

When, however, he repudiates what was written in his own hand, then from the evidence of witnesses entered in it, or from such other means, it should be determined whether it is invalid or valid. To that effect also, the **Same Author** : " If a debtor denies his own handwriting

entered in a document, he should be confronted with the witnesses in the document, or with the opinion of the writer."

When it is attacked as not having been made at all, the decision should also be in the same manner ; so says the **Same Author** : " In disputes as to the execution or non-execution, the decision regarding the document should be by (means of) witnesses." The use of the word ' witnesses,' is (only) indicative [1] as in the **text**: " When a document has been repudiated, the claimant may cite those who are entered in it," has been stated by the **Same Author.**

As to what has been stated by **Nârada** [2] : "In regard to a document which has been doubted, the authenticity may be established by the examination of his own writings etc., the tenor of the document, peculiar marks, circumstantial evidence,"; as also what has been stated by **Yâjñavalkya** [3] viz : " The genuineness of a doubtful and disputed document may be established by (comparison with other) documents and (other writings) of the party (written) in his own hand, and by similar other means ; as also by presumption[4], by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title, and by inference," that has a reference to a document which has no witnesses on it, and which was written by him in his own hand, as there is an absence of witnesses and the like means for (arriving at) a clear decision. Hence also **Hârîta** : " Upon a doubt (arising) about the handwriting of the debtor whether it was his own, when he was alive or was dead, the decision regarding such a document is reached by (a comparison of) other documents executed in his own hand." ' Executed in his own hand ', this expression is indicative of proof etc. referred to before.

Where, however, there exist the means for a clear decision, such as witnesses etc. as e. g. in documents written in his own hand, and having attesting witnesses, there a decision may be reached by a comparison with the other documents which are a means for arriving at a clear decision. So says **Kâtyâyana** : " Direct evidence can never be shaken by presumptive evidence ; therefore, a decision about a document

1 *i. e.* not restrictive ; thus not only witnesses, but others also who are likely to be conversant with it may be cited to prove it.

2 Ch. I. 143. 3 Book II. 92.

4 In the text of Nârada the expression is क्रियाचिन्हयुक्तिप्राप्तिभिः, while in Yâjñavalkya it is युक्तिप्राप्तिक्रियाचिन्हसंबंधागमहेतुभिः The translation in Nârada's text is as has been interpreted by Asahâya, while that in Yâjñavalkya according to the interpretation by Vijñâneśvara in the Mitâkṣarâ.

which is challenged as false can be reached by the statements of witnesses; for, indeed, a party is likely himself to challenge a document with the object of securing the amount of (a successful party upon) a decision." The meaning is that by the statements of witnesses, and not, moreover, from the debtor's statement, as there is a possibility of his having a wrong motive. With this very object has been stated by **Nârada**[1] also: "A document shall be annulled by a document alone, and an attested document by witnesses." The meaning is that a document which has no witnesses etc. should be examined by documents etc. similar to it.

As for what has been stated by the **Same Author**[1]: "A writing should be known to be superior to witnesses; but not the witnesses over the document," that has a reference to a document which has no (attesting) witnesses entered in it. Therefore, it should be understood (as the conclusion) that where there are witnesses, the decision shall be by the evidence of the witnesses etc. entered in the document; that of a document not having witnesses, by a (comparison as to) similarity etc. with his own handwriting in other documents.

How, then, can a decision be reached in regard to a document the witnesses etc. on which are dead? so says **Kâtyâyana**:

PAGE 64* "Now if the writer be dead, as also the witnesses, then undoubtedly their validity should be determined by (a comparison of) their own handwritings and the like." The meaning is, 'of these' *i. e.* of the deceased witnesses etc.; 'by their own handwriting and the like' *i. e.* by their own *gotra*, *varṇa* and other similarities well established in other documents. **Viṣṇu**[2] also: "Where a debtor, or a creditor also, a witness or the writer also be dead, there, that document should be proved by (a comparison with) their own handwritings."

In regard to a Royal Deed says **Kâtyâyana**: "What is (known as) *Paśchâtkâra*[3] order, one should deliberate it with effort; if it is based on good probative reasoning, it would then be a valid document; otherwise it should be cast aside, and one should decide it again. If what is untrue has been established as true through ignorance, that should be set aside, even though it was declared as valid by the king with effort". *Paśchâtkâra-nibandhanam i. e.* entered as a document of success (*Jayapatra*) known as *Paśchâtkâra*. When a document bears the (royal) seal, even if all

1 Ch. I. 145. 2 Ch. VII. 13

3 पश्चात्कार see above p. 104 where this kind of document has been fully described.

those who were entered in the document be dead, that document is regarded as reliable evidence". 'Reliable evidence' *i. e.* by reason of the seal etc.

Hence also **Prajâpati** says by taking *S'âsana* as an example: "In regard to a Royal *S'âsana*, the decision should be made after great effort in exhibiting on it the King's own handwriting, his signature, and the handwriting of the scribe". **Kâtyâyana** also: "A *S'âsana* obtains validity when it is carefully completed without any flaw in regard to the royal seal, in regard to its execution, in the matter of possession, when it contains the marks, and is endorsed in the king's own hand". 'Completed in execution necessary without any flaw', *i. e.* devoid of any degraded, or disconnected words, or the like.

A peoples' document also sometimes acquires validity by possession; so says the **Same Author**: "In the presence of one who has reached competence, if possession of property is enjoyed under a document for as long a period as of twenty (years), that document becomes free of defects". In **another Smṛti** also has it been stated: "Now, if a pledge with possession has been firmly well established for twenty years under a document, such a document is (regarded as) free from defects. When a boundary dispute has been decided, a boundary deed has been ordained; its faults should be declared within twenty years."

A document of pledge entered in a debt-bond attested by witnesses who are dead is regarded as of good evidence even with possession for a small period. A transaction of pledge is 'a pledge;' 'dead witnesses,' *i. e.* the witnesses on which are dead. So also **Nârada**: [1] "Where the witnesses, the creditor, the debtor, and the writer are dead, that document also becomes valueless unless it contained a pledge of permanent duration." 'Duration,' *i. e.* possession. Or, it may be validated by proving the document to the debtor by the receipt of some amount paid upon the strength of the document; so says the **Same Author**: "If anything has been received, or knowledge had been brought, the document will certainly be good evidence, even if the witnesses be dead." The **Same Author** [2] further expounds 'knowledge': "When a document is produced every time, has been urged, and proclaimed, it remains valid for ever, even if the witnesses are dead."

Prajâpati also states that a (document may obtain) validity by possession: "Where a document was executed under a different motive, and where the person entered in it denies it, the person in whose possession the document stands, for such a one the possession may be directed."

1 Ch. I. 138. 2 Ch. I. 140.

i. e. as by way of a decision. The use of the word 'possession,' is only indicative. Hence also **Nârada** [1]: "If a document is signed by a stranger, and meant for a different purpose, it has to be examined in case its genuineness is suspected, by inquiring into the connection, and with the titles, and by resorting to reasonable motive." 'Made for a different purpose' *i. e.* for deceiving the co-heirs etc. *Vipratyaya*, 'difference,' *i. e.* suspicion; 'connection,' in the past, such as payment and repayment of money; 'title,' e. g. whether it is possible for him to have such money or not, of this sort; 'motive,' *i. e.* inference.

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In this manner, a document marked with the name of the creditor, should also be examined whether it was executed from motives of deception or the like. To that effect also **Bṛhaspati** [2]: "Their own kindred relations deceive women, minors, and persons under distress, who are ignorant of letters, by making a document marked with their own name; therefore it should (correctly) be examined by regard to circumstances and inferential reasoning, and then executed. Forgerers who are adepts in (their knowledge of) the country and transactions, utter forged documents; therefore one should examine it with effort." 'Ignorant of letters' *i. e.* one who does not know the letters. **Kâtyâyana** also: "As a reflection in a mirror (although) not real, looks as (if it were) red; in the same manner, artful people prepare reflections of documents." **Vyâsa** also: "Some artful men write documents as if (they are) real documents; therefore no proof is regarded as conclusive on the sole strength of documents." Therefore, the import is that it should be carefully scrutinized. Hence also **Nârada**[3]: "There are some men who depose falsely in regard to a cause through covetousness; there are other wicked-souled men who utter false documents; both should be scrutinised with meticulous care by the king, (viz.) documents, according to the rules regarding documents; (and) witnesses, according to the law of witnesses." 'According to the rules regarding documents' *i. e.* by all the means existing before which would establish the genuineness.

That document, however, the genuineness of which cannot be established by all these means, such a one certainly is not good evidence. Then, in that case, casting it aside, one should make a decision by (means of) an ordeal, 'when there are no documents or no witnesses, one should resort to the ordeal in a lawsuit" vide this text of **Kâtyâyana.** Similarly

1 Ch. I. 144. 2 Ch. VIII. 21; 20. 3 Intr. I. 69–70

also has been stated by **Hârîta** even with this same view: "(Where a party says) 'this document was not executed by me, it was caused to be falsely made by another,' such a document should be laid aside; the decision in the cause should be by an ordeal." The purport is that, where a document is not entirely free from a suspicion of its being false, there the decision on the point at issue shall be by an ordeal, since a document which has been written in his own hand, and has been produced as an instance, cannot be disrespected; therefore even where there is not one's own hand, *gotra*, and mark etc. but on account of a strong protest by the defendant where the suspicion of its being false cannot be removed, there also, by an ordeal shall be the decision. To that effect is **Prajâpati**: 'Where a document exists which is equal to it in appearance in regard to the name and gotra, but where the money is (alleged to have been) not received, there, the decision should be made by (recourse to) an ordeal." 'Equal to it in appearance,' *i. e.* equal in appearance to the other document which is not disputed; 'money is not received,' *i. e.* where the defendant is strong (in his protest).

As to what has been stated by **Nârada**: "When a document is (alleged to be) false, and the debtor has not declared open the flaw, then after a lapse of twenty years the document acquires stability", the meaning of that is this: a document which is attacked as bad, but (along with it) possession has been for a long time, it has to have its evidentiary value established by an ordeal, as (possession) for a long time merely cannot establish (its) permanence. One, however, who does not (take steps to) remove the flaws in a document, for such a one **Kâtyâyana** states a penalty: "When [1] the statements of witnesses, as also the writing in a document are alleged to be false, one who does establish the validity of the (alleged) invalidity, shall be made to pay the penalty for the highest amercement". The meaning is that when the statements of witnesses, and also the document (written) by a scribe, have been attacked as false, the plaintiff who does not establish the validity of what has been attacked as false, such a one should be punished with the highest amercement.

In the case of immovables and the like, however, the **Same Author** states another penalty: "He who makes a false document about the sale or mortgage of immoveable property, and when he has been duly proved (to have done so), such a one should be deprived of his tongue, hands, and toes". Therefore the source of this document should be brought out by

1 P. V. Kane reads कूटोक्तौ साक्षिणां वाक्याल्लेखकस्य च पञ्चकम् ।

(means of) the holder of another document; so says
PAGE 66* **Vyâsa**: "When a document executed by another man is seen in the hand of another, by such a one must necessarily be explained the document and the reason (of his possession) of the document from him". 'From him', *i. e.* from the owner.

Likewise, when documents mutually conflict, the **Same Author** states the rules as to which will supersede which: "As against a document in one's own hand, the peoples' document; over that, however, is royal *S'âsana* regarded as superior evidence, when produced for a decision at law". By the use of the expression 'peoples' (document) here, is indicated any document other than the one made in one's own hand, under the maxim [1] of 'the Cow and the Bull'. Also by the words 'Kings', (is indicated) King's orders other than the *S'âsana*. And therefore (a document) executed by another has greater force than that made in one's own hand; (superior) to that also is the royal (order); and (superior) to that even is the *S'âsana*; this is the meaning.

The greater strength of the one following, over the one preceding, is to be understood from a relative improbability of fraud. Hence it should be understood also, that an unattested document executed in one's own hand is superior to an admission (*Upagata*), and of greater strength than this is that which is made in one's own hand and bearing (attestations of) witnesses.

Hence also documents as a class are superior to witnesses; so says **Saṃvarta**: "Against a document, evidence which consists of witnesses, that is declared as false; for it is a door for illegality, and hence the king should discard it". The meaning is that witness evidence which is opposed to documents is powerless. **Bṛhaspati** also: "Where the force of letters is utterly destroyed by oral evidence, there would be an entire annihilation of transactions, and disorderly confusion is produced". 'Transactions', *i. e.* documentary evidence. **Kâtyâyana** also: "Not by ordeals, nor by witnesses, is a document defeated anywhere; the legal force of a document is always superior, and hence is never subordinated by any other". But by a document it is defeated; so says the **Same Author**: "Either by a counter-deed regarding the same matter, or by a document made particularly for that matter, may documentary evidence always be refuted; it can never by refuted by any other". 'By any other', *i. e.* such as by witness evidence etc. Hence also **Bṛhaspati** [2]: "A document is never defeated

1 गोबलीवर्दन्याय, Cp ब्राह्मणपरिव्राजकन्याय. The two are contrasted thus: Where a particularly mentioned object is intended to be prominently stated, there the ब्राह्मण-वसिष्ठन्याय is applied; but where the separate mention of the two is in regard to their greater or less notoriety, there the गोबलीवर्दन्याय is used.

2 Ch. VIII. 31.

by witnesses or by an ordeal ; by non-production or by non-declaration, it gets a defeat by negligence, *i. e.* running over a long period". To that effect also **Vyâsa**: "An unseen or undeclared document, of which the creditor and the debtor are dead, and also one which has neither a security or surety, is not held valid after a long interval". 'Neither security or surety', *i. e.* without either a pledge or a personal surety. The import is that 'after a long interval', *i. e.* if of a long date, 'is not held valid', by itself. **Kâtyâyana** also : "A document over which thirty years have passed, and which had never been produced or declared, such a one is not held valid even if witnesses exist". In regard to 'non-production', the **Same Author** states a special rule : "When money lent has ceased to carry interest, one who does not produce a document, nor does he make a demand from the debtor, such a document assumes a suspicious aspect". 'Debtor i. e. who is nearby, and wealthy is implied. So also **Bṛhaspati**[1] : "Whena debt has not been demanded from one who is wealthy and also is at hand, by one who is competent, it loses its validity on account of suspicion ; in such a case a document is reduced to powerlessness".

In this manner where a document is reduced to invalidity generally on account of non-production &c. the **Same Author**[2] states an exception : "In the case of the insane, the idiot, the minors, those afraid of the king, or those on a journey, those who have not reached maturity of intellect, or those oppressed with fear, a document is not invalidated." **Saṁvarta**, however, regards documents of a long date to be deserving of consideration, although they look like semblance of documents : " That which has been made under compulsion or subvention, as also that made by an interested person or a lunatic; these and many others like these, if of a long standing may become the subject of a dispute". Therefore, the import is that in regard to these and others, the aforestated procedure regarding (the testing of) the validity should be followed by the deciding authorities. Hence also **Kâtyâyana** "When after taking money, a writing is duly passed to another, or when it is concealed by another when it is in his hands, or when it is confined in another's house, or wherever money has been advanced or returned preceded by a document, this same rule of procedure should be understood (to be applicable) for the determination of validity of documents."

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Thus in the **Smṛtichandrikâ** the Examination of **Documents**.

1 Ch. VIII. 28.

2 Ch. VIII. 22.

Now the **Discussion about Possession—Bhaktinirûpaṇam**

There **Nârada**:[1] "Having heard the reply (of the defendant), (in the part) for the consideration of proof, one should point out documents as the means, or possession for a long time with the[2] characteristics determined by the neighbours." By the use of the word 'means' here are expressed witnesses under the maxim of the 'Cow and[3] the Bull.' Therefore the meaning is this. One may exhibit a document or witnesses in disputes relating to houses, lands or the like; or one may declare (his) possession. Hence also, by this **Same Author** has been detailed a special rule: "In disputes regarding a house, or land or the like, the decision is to be from the (evidence of) the neighbours; men belonging to the town or village corporations, and also men who are the most senior, what these men may say when duly appointed, that should be accepted as the decision of the cause." The substance is this: in a dispute regarding land or other (kinds of) immovable properties, one may direct either of the kinds of human evidence, but never an ordeal. There even, documents and possession, these two, are the best; so says **Kâtyâyana**: "Documents, witnesses, and possession are regarded as the three means of proof; in these means of proof for men, possession has been regarded as on a footing of equality with valid documents." The order of words is 'in the means of proof for men' *i. e.* the meaning is, among human evidence. 'Valid documents,' *i. e.* unimpeachable documents.

At some places, the **Same Author** mentions the superiority of possession alone over the other two; "When there is a doubt in regard to a passage of way in a street, a watercourse, or the like, possession alone has preponderance among the means of proof; this is certain." Even in regard to matters other than a street etc., without the help of possession, the other two have no importance; so says **Nârada**: "Even when a document exists, and even when witnesses are living, especially in regard to the immovables, that which has not been in possession, cannot have stability (of title)." **Yâjñavalkya**[4] also: "Even in a title, there would be no force if there is no possession even for a short time."

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1 Not found in the published editions.

2 सामन्तगोपेतं—See Yâjñavalkya II. 151. and the Mitâkṣarâ. Text p. 104 lines 13–14 and English Translation page 1150. ll. 25–26 with quotations from Kâtyâyana.

3 See above p. 120.

4 Book II. 27.

'In a title,' e. g. in a purchase which can be established by documents, witnesses and the like. Thus it comes to be stated as of course that in the cases where there are documents without (evidence of) title, even a little possession is merely useful by reason of its removing a doubt, but it is not (by itself) a means of proof. It has also been stated by **Kâtyâyana**: "When in the presence of one who has capacity, possession is enjoyed under a document, and ten [1] years have passed over, there, the document is (regarded as) unimpeachable." By **Bṛhaspati** [2] also. "Of one in regard to whom are written down in one S'âsana, the village, land, and gardens also, even by the possession of one only, all (others) of these are regarded as being possessed by him."

PAGE 68* Where, however, the owner has not prevented an adverse alienation, a document of such an owner is fruitless for him. So says the **Same Author** [3]. "One who, while looking on, does not make any move while another is alienating the land, such a one, although an owner, will not get it back even if a document exists." 'Exists' *i. e.* is a good one; the word 'land' also is indicative of the subject-matter of the alienation. As says the **Same Author** [4]: "One whose property is being alienated in his presence by his coparceners, or by strangers, and another is in possession, that one will not afterwards be entitled to recover it." The meaning is, that the document of title of the owner is destroyed of its force as supporting his title of ownership by his non-intervention at an alienation in his presence, which becomes indicative of the owner's consent. By this it comes to be stated as a matter of course, that the owner who desires to establish his ownership by a document must prohibit with effort an alienation in his presence.

The same (rule) should be observed in (the case of) unobstructed possession in one's presence. To that effect also **Vyâsa**: "One whose land has been occupied by others for twenty years, (even) when a powerful king be there, such a one will not succeed in his case," *i. e.* even when there is a document—this is implied. Hence also **Saṁvarta**: "While one is in occupation of a house, or a field, one whose possession occurs when the king exists, there a document is of no use," *i. e.* it will be of one occupying, who is in possession; since, in such a case, for one who is neglectful, a document of title is of no use, *i. e.* cannot be a means of proof, since by a neglect of possession which is indicative of an obstruction to ownership, the capacity of a document as a means of proof is destroyed; this is the meaning.

1 Some quotations read twenty years. See Coll. p. 724. l. 6.
2 Ch. VIII. 18. 3 Ch VIII. 19. 4 Ch. VIII. 8.

This, however, has been stated with the object of indicating the futility of a document; and not, moreover, for demonstrating the ownership of the person in occupation; since his (title of) ownership cannot be established by (the fact of) mere occupation. Hence also **Kâtyâyana**: "One who has forcibly taken away beasts, women, or men, should not lay stress on possession, nor his son also; this rule has thus been established." Hence also the illustration of a cow has been given by **Vyâsa**: "As a cow perishes when neglected by the cowherd, so also land occupied by others in one's presence is taken away by possession." By **Yâjñavalkya** [1] also in this manner has been stated only the loss of one who neglects, but not the acquisition of title by the occupier: "Of him who, while he sees his land being enjoyed by another looks on, and does not object, the loss of (the right to) the land occurs after twenty years; of money (the loss takes place) after ten years (under similar circumstances)."

The loss here contemplated is only of the means of establishing one's title of ownership upon the strength of a document, and not in regard to the ownership over the land or its fruit, as it has been said that by mere neglect, the right of ownership is not lost. Therefore in such a case, the right of the neglector is not lost, if the decision be (taken) by (resort to) an ordeal, as the right of ownership may possibly be established by a resort to it. Not so certainly by a resort to what is known as a judicial investigation, as the weakness of the document has been stated, but by a resort to the second kind of judicial proceeding, as the unimpeachability of the person in occupation, because of the owner having no answer, a non-owner would win. So says **Manu** [2]: "If (the owner) is neither an idiot nor a minor, and if his chattel is enjoyed (by another) before his eyes, it is lost to him by law; the adverse possessor shall retain that property." **Bṛhaspati** states the meaning of the word *Vyavahâra*: "That which has been determined by means of proof is called *Vyavahâra*; being rendered unanswerable on account of verbal trickery is declared to be the second." 'Determined by means of proof' *i. e.* determined by means of human proof. Of one also who has been defeated by reason of his indulging in verbal trickery, or who has been rendered answerless, a judicial decision is certainly reached, because the success of one in possession is rendered easy on account of an absence of the means of proof; as **Yâjñavalkya** [3] has stated: "After discarding all circumvention, the king should decide disputes according to facts."

1 Book II. 24. 2 Ch. VIII. 148. 3 Book II. 19.

In this way, on account of a non-protest against an adverse alienation or possession, the uselessness of the witnesses also, should be understood to follow after the rule[1] of 'the Stick and the cakes.' Hence also **Nârada**:[2] "Of him who neglects and stands by, if a period as aforesaid is passed, the suit does not succeed." The meaning is that the point which he has in view cannot

Page 69* be established by human evidence. The **Saṅgrahakâra** also: "Without possession, (mere) title is useless when it (*i. e.* the land) is being enjoyed by others also". By the word 'title', here are expressed the means for its proof, such as documents and witnesses. Hence also **Marîchi** states a loss generally even of those cases which could be established by witnesses: "A cow, a conveyance, an ornament, a friendly loan, must be returned within four or five years, otherwise it may be lost".

Here **Manu**[3] states an exception: "Things used with friendly assent, a cow, a camel, a riding horse, and (a beast) made over for breaking in, are never lost (to the owner)". 'Made over for breaking' e. g. a young calf. In the case of a friendly loan (*Yâchitaka*) **Vyâsa** states an exception: "What is enjoyed as a friendly loan, by the vedic scholars, or the king's officers, or by friends, or by the kindred also, never is it lost by possession (with the bailee)". What i. e. such as ornaments etc. the **Same Author** states the reason why there is no loss: "Extinction of religious merit (*Dharma*) shall occur in the case of a vedic scholar, there will be danger in the case of the king's officer, friendly feeling in the case of friends or kindred; (therefore) what is enjoyed by these is not lost (to the owner)". 'Enjoyed' i. e. even for more than five years, is the implication. By this, it comes to be stated that in the case of forbearance for a good cause there would be no loss at any time, therefore, even in cases of (the rule as to) the loss by a possession for ten years or for twenty years also, an exception should be observed when there is forbearance for a good cause. Hence also **Manu**[4]: "A pledge, a boundary, the minors' property, an open deposit (*Nikṣhepa*), a sealed deposit (*Upanidhi*),women, the property of the king, and the wealth of a vedic scholar (*Śrotriya*) are not lost on account of (possession) enjoyment." In the case of boundary, the reason for forbearance is the marks at that spot being good means of proof; in the case of women

1 दंडापूपन्याय—The maxim of 'the staff and the cakes'. मूषकेन दंडो भक्षितः तेन अपूपोऽपि भक्षितः इति प्राप्तमेव.

2 Not found in the printed edition.

3 Ch. VIII. 146.

4 Ch. VIII. 149.

modestly[1], in the case of kings' officers and the vedic scholars being engrossed in visible and invisible purposes; in the case of the rest, the cause of forbearance is clear. In this manner, in the case also when a cause exists for forbearance, such as relationship, there is no loss.

To that effect is **Vyâsa**: "By the uterine relations, or by the kindred also, what is enjoyed, as also by one's own people, in these cases (mere) enjoyment does not establish (the right); possession should be established elsewhere." The meaning is that in such a case the loss of (title to the) land will not be brought about by reason of the possibility of forbearance in regard to the possession by the uterine relations or the like, on account of their relationship. **Pitâmaha** also: "Possession has force where the person in possession is an outsider; the possession of persons of one's own family is not of a lasting force for men." 'Has force' i. e. creating an adverse title on account of a document and the like opposed to one's interest.

So also **Kâtyâyana**: "One should not set up a title by possession against women, as also against the property of gods or of the king, also in regard to the property of a minor, or a Śrotriya Brâḥmaṇa, as also in regard to property hereditarily acquired in maternal or paternal succession." In the case of the property of gods, by its very nature it being incapable of warding off (the possession), there is no loss (of title) of its property on account of possession by another. The mention of a Śrotriya Brâḥmaṇa is indicative by implied extension of those who are engrossed in other things. Hence also **Nârada**: "A certain celibate student observes the vow for thirty-six years, a man who is after the acquision of wealth may live for a time in another place; after the conclusion of the vow for his studies, the student may thereafter be in pursuit of money; the possession for fifty years of the property of such a one will bring about a loss (of ownership). For every (branch of the) Veda, a twelve year's period has been prescribed in the Smṛtis for the student; for artisan students also the period declared is upto the completion of the study. The possession by the kindred or relations of these which was enjoyed in their absence, as also of those offending against the King, that does not bring about a loss on account of lapse of time." This series of exceptions should be understood (to hold) in the absence of title by the person in occupation. Hence also **Bṛhaspati**[2]: "Never on any account shall possession be acquired over women[3] without a document at any time; and likewise in regard to the property of the

1 अप्रागल्भ्ये—प्रागल्भ्य is maturity of intellect, boldness, —want of boldness.

2 Ch. IX. 21.

3 Female slaves (Jolly).

king and of a Srotriya, as also as regards the
PAGE 70* idiots' and minors' wealth." 'Of women' i. e. in regard to (their) property; 'without a document' i. e. without evidence of title, **Nârada** [1] also : "The property of a woman as also of kings can never be lost (to the owner) should it even have been enjoyed for hundreds of years without a (proper) title". The meaning is, of the kings also, the property. For, says the **Same Author** [2] also. "By enjoyment before his eyes for twice ten years, even pledges and the like also are lost to the owner, excepting the property of the king." 'Of pledges and the like also', this is an over-statement. Even in regard to these there being the possibility of the existence of a reason for forbearance against possession by stating 'Without title'. On a parity of reasoning with women's property, or King's property, the Author points out that if there is a (good) title, it is lost. It also has been pointed out by **Hârîta** : "What was enjoyed by a soldier, or a swindler, [3] or by force, what was robbed, or was kept secretly concealed, as also what was given out of friendship or love, or which was given out on hire; likewise for the protection of a dwelling, or what was obtained upon a request out of love – in all these several kinds of possessions, title has been declared in the Smṛtis to be the determinant." For the protection of a dwelling, i. e. for the protection of a dwelling house. Thus it should be construed that possession which was adverse and was without a reason for forbearance, if it was for the stated period, in the absence of a (good) title, makes (the evidence of) documents and witnesses useless. Therefore, in cases regarding a house or a field or the like, such documents or witnesses should be declared as evidence, as are favourable for the fact of possession, and are unfavourable by reason of an absence of (evidence as to) personal knowledge or donation.

Again, what kind of possession should be declared ? Anticipating this question, it has been said : "With the characteristics [4] determined by the neighbours, possession (continued) for a long time". Land etc. which is in the vicinity of the field *i. e.* which is the subject-matter to be determined upon—the owners of that are the Sâmantas—neighbouring proprietors ; known by these, is the one determined by the neighbours. What is the meaning "Possessing the characteristics" has been pointed out

1 Ch. I. 83. 2 Ch. I. 82.

3 भट–चाट–भट—a soldier, a mercenary or a hireling. चाट–a rogue, a swindler —प्रतारकः–विश्वास्य यः परधनमहरति—see Yâjñ. I. 336. Coll. p. 578.

3 भाटक—wages, hire, rent. 4 सामंतलक्षणोपेतां—See note above p. 122.

by **Pitâmaha** : "Accompanied with (a good) title continued for a long time, uninterrupted, without protest (from the opponent) and with notice to the opponent, thus possession has been stated to be of five varieties in the smṛtis". 'Accompanied with (a good) title', *i. e.* having a good title for its foundation. So also **Hârîta** : "Never without a root does a branch grow up in the firmament ; therefore a good title is the root, and possession has been declared to be the branch."

What again is (good) title ? Anticipating this says **Nârada** : "What was acquired or obtained by gift or by purchase, as a result of bravery, as also at a nuptial, what devolved from an issueless kindred, thus of six varieties is the source of (a title to) wealth." 'Acquired' *i. e.* obtained by birth (right) such as the paternal estate or the like etc. ; or acquired by finding[1], such as a treasure-trove etc. **Bṛhaspati**[2] also : "By learning, purchase, charge, bravery, or in connection with a wife or issue, and the share of an issueless *sapiṇḍa*, (thus) an immovable is acquired in seven different ways". 'Charge' *i.e.* a pledge (or mortgage) ; that too sometimes becomes a cause of ownership, as we will say (hereafter) ; '(continued)' for a long[3] time *i. e.* for not less than thirty years. To that effect, says the **Same Author**[4] : "Commencing (from the time of) occupation, one whose possession has been continuous for (a period of) thirty years without a break, that possession of such a one should not be disturbed". 'Occupation', *i. e.* seizure.

Thus, moreover long-continued possession supported by (a good) title is (good evidence) ; and if it be not for a long time, it should be supported by title ; thus should (it) be construed. Hence also **Pitâmaha** : "Not without title is possession (of any use), nor the title (if) devoid of possession ; by the mutual interconnection of these two, evidence is well placed," *i. e.* (as pointed out) in the aforestated adjustment. With this import **Bṛhaspati** also says : "By possession merely never can land be securely obtained, nor even by a good title (only), it is securely established by the law, and not otherwise." 'Merely' *i. e.* without a proper title. In this manner if it is without the other qualification, even then (also) it is not securely accomplished. Hence also **Vyâsa** :

PAGE 71* "Accompanied with a (good) title, long continued, uninterrupted, and in the presence of the opponent, (thus) possession is expected to have five components".

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1 दर्शनेन—Acquisition. Cp. *apprehensio* or *occuputio* of the Roman Law. Same as आधिगम in Gautama Ch. X. 39–42.

2 Ch. IX. 2.

3 दीर्घकाला—See the text of Pitâmaha above.

4 Ch. IX. 7.

By saying 'having five components', the author points out the insufficiency of possession as evidence of (ownership) the same if it be wanting in one component even. And (so) it has been pointed out by **Nârada**[1]: "He, however, who pleads possession only, and no title of any sort, such a one should be considered as a thief, in consequence of his pleading such illegitimate possession". Therefore, the import is, that the title and the like components also must be declared in the presence of the members of the Court. Hence also **Kâtyâyana**: "By a disputant who has taken his stand on possession, but whose document of title has been lost, should be declared in the assembly, the period (of his occupation), evidence, and donation also". The use of the word 'donation' is indicative, by implication, of a title ; the word, 'and', *cha*, is intended to include continuity and like other particulars. Thus this is the substance : By a disputant who relies upon possession as evidence, the evidence consisting of and known as possession, and its particular compliments, such as title, long time, and like others, should be declared. If, however, after these are declared, there is incongruity, these should be established (by evidence), as there cannot be a certainty by a mere declaration.

In such a case, the determination of a long-continued and the like special kind of possession is dependent upon witnesses ; so says the **Saṅgrahakâra**: "In regard to the establishment of (the fact of) possession, the chief witnesses are first, its cultivators, inhabitants of the village, field neighbours, (these are) in the order for establishing it". 'For establishing it' *i. e.* the meaning is, bringing out the particular fact of a long time and the like, and possession also.

For bringing out the title, however, the three, such as documents and the rest, are evidence ; as says the **Same Author** : "Documents, witnesses, and possession are the (means of) proof in regard to (a dispute about) a field, a house, and the like, when long-continued title, purchase, and gift are disputed". The meaning is that when the plea of possession is destroyed and the basis of title such as purchase etc. are disputed, and refuted by the defendent, for one who has to make out a title in regard to land etc. evidence consisting of witnesses and possession is proof.

Indeed, how can possession be evidence of title, for even possession without title is witnessed in cases of forcible

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1 Ch. I. 86.

(continuance for) a long period, when any other origin is not forthcoming, its origin in a good title itself is what remains like the Vaidic origin of the Smṛtis of **Manu** and others.

Indeed, even then when possession which had commenced at a time within memory has been taken away, and there is non-perception, although proper means exist (for it), and thus the absence of the original foundation of title is determined, in such a case how can title be established on the strength of possession merely? (The answer is) true, and (therefore) it is for this very reason that title is attempted to be determined by means of documents and witnesses. If, however, it has commenced at a time within memory, on its own strength even, and so it may be proper to mention the three kinds of evidence. This very thing has been stated also by **Kâtyâyana**: "In cases (falling) within the memory of man, possession in the case of land is regarded as evidence of ownership when it is with title; but in cases (extending) beyond human memory, enjoyment for three generations suffices by reason of the absence of knowledge of (the proof of) title". 'In the absence of title', *i. e.* the meaning is knowledge of (the proof of) title. In the absence of title, *i. e.* the meaning is that in the absence of any contradicting evidence in the form of an absence of circumstances which may account for the non-knowledge.

This is (in short) what is (intended to be) stated: Possession continued within a period which is likely to be within memory *i. e.* within a period of one hundred and five years is regarded as evidence of ownership only by the evidence of title other than of oneself, as the knowledge of one's origin by oneself is vitiated by the absence [1] of

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1 योग्यानुपलब्ध्या—योग्या + अनुपलब्धि—mark the term अनुपलब्धि. उपलब्धि means ज्ञान or knowledge, and अनुपलब्धि is its absence; absence of knowledge. An अनुपलब्धि may occur in two cases viz. (1) where there is a capacity for the perception, but still there is want of perception (as a fact), and in that case, the अनुपलब्धि is योग्या; and secondly (2) where there is an absolute absence of capacity for perception, and therefore there is want of perception, in which case it is योग्यानुपलब्धिभाव. Thus घटज्ञानाभाव may be possible in two cases: (1) where the absence of knowledge or perception is not due to an absolute absence of the means of perception such as the eyes &c., but still there is ज्ञानाभाव. Here there is अनुपलब्धि in spite of the means for the उपलब्धि and so the अनुपलब्धि is योग्या.

In the present context, where the possession is recent, it is possible to ascertain the origin, but there may exist circumstances which may account for the non-knowledge (अनुपलब्धि) of the origin; in such a case it is योग्यानुपलब्धि (see for a further exposition Coll. Vol. II. Mitâk. p. 735 (note).

circumstances which may account for the knowledge. In regard, moreover, to a possession commenced within a period likely to be within memory, *i. e.* within a period anterior to an interval of a hundred and five years, even without (the evidence) confirmatory of one's origin, can be (regular as) evidence of ownership based on other means of proof. The exposition of the expression 'handed down for three generations in succession' has been made by the **Saṅgrahakâra**: "That which was enjoyed by three generations of deceased ancestors independently, such possession should be known to be (descended) from three generations, enjoyed during their lifetime". This, moreover, is generally stated by way of an example of possession commenced beyond the period of (human) memory; thereby when possession has been used as evidence of title, its descent from a successive line of three generations is of no use, its commencement beyond the period of (human) memory alone is useful.

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Hence also even in the absence of a period exceeding three generations, possession has been stated by **Bṛhaspati**[1] to have the characteristics of a descent for three generations, as regards time only: "Should even the father, the grandfather, and the great-grandfather of a man be alive, land having been possessed by him for thirty years, without the intervention of strangers, it should be considered as possession extending over one generation; possession continued for twice that period (is called possession) extending over two generations; possession continued for three times that period (is called possession) extending over three generations; possession (continued) longer than that even, is (called) possession of a long standing. 'Thirty years' *i. e.* plus five is (to be) the supplement, as it has been stated in **another Smṛti** that "when for thirty-five years, it is called possession for a generation."

Thus, moreover, one who sets up a title, must establish the title by means of documents and witnesses only, as evidence of possession which was commenced at a period beyond human memory would be impossible. Hence also **Bṛhaspati**[2]: "When the person who took possession is complained against, a document or witness is (considered) decisive; when he is no longer in existence, possession by itself is decisive for his sons". 'When he is not in existence' *i. e.* the person who took possession is not in existence. With this very import **Kâtyâyana** also: "The

1 Ch. IX. 23-24.

2 Ch IX. 25.

person who took possession, although in occupation, must clear up defects in the document; his sons, however, the defects in the possession; but he is not saddled with defects in the documents". The use of the word son, is indicative by implication of the son's son also. Hence also **Yâjñavalkya**[1]: "He, who made the acquisition of title, if sued, should prove it; (but) not his son, nor his (i. e. the son's) son; for in their case, possession itself has greater force." One who has acquired a title, must substantiate the title by means of documents and witnesses only, as possession is not powerful, by reason of its having commenced at a period within human memory. Therefore, one who has acquired it, must prove the title independently of possession. And of the son and the son's son, moreover, when they are in continuous possession for a long time, by including possession also as means of proof.

Therefore in the case of continuous possession for a long time, the proof of that even is sufficient; so says **Bṛhaspati**[1]: "The person taking over should establish his possession and title also in court; his son (may prove) possession alone; while the son's son and the rest, nothing at all". The meaning is that his son should prove possession alone, continued for a long time from the time of the commencement of possession by the first man until a very long time before the (commencement of the) dispute without protest and continuing in the presence of men who had a right to oppose. The use of the word 'son' is intended to indicate the son's son also. Hence also **another Smṛti**: "One, however, by whom possession has been taken, shall be punished if he do not establish (his) title; not his son, nor his son also; nor also is their possession lost"; i. e. the implication is, that when the possessoin has been continuing for a long time. By this it necessarily comes to be stated that in the case of a long continued possession on the part of the son's son and the rest, even if title is not established, possession is not lost.

It has also been stated by **Viṣhṇu**[2]: "Land the possession of which has been enjoyed for three (generations) according to law, even in the absence of a document, the fourth man in such a case shall duly retain it". 'In the absence of a doument' i. e. the meaning is that even in the absence of evidence throwing light on the title such as purchase or the like others. Hence also **Bṛhaspati**[3] even: 'What has been held in possession by three generations under different kings, even without evidence, such possession is equal to the gift of the Veda, and should never be taken away by the king

1 Book II. 28. 2 Ch. V. 187. 3 See Ch. IX. 29.

on any account". 'With evidence' i. e. evidence throwing light on title. **Nârada** [1] also: "That which (being) absolutely without a title, has been continuously held in possession by three generations in the past, never such (possession) is possible to be taken away which has come down in a succession of three generations." 'Absolutely whithout a title' i. e. the meaning is that even without a title, even such as may

PAGE 73* be obtained by possession even. **Śaṅkha** also. "Ancestral property, even without (evidence) of title, (but) which has been held in possession by the past generations, one may secure". This is of the same import as the last. 'May secure' i. e. the fourth (generation), and the following. So also **Bṛhaspati** [2]: "Where possession extending over three generations has descended to the fourth generation, it becomes legitimate possession, and title must never be inquired into". The meaning is that in the case of possession of this character, one should not enquire about any evidence as to the origin of title on any account.

In the case of a possession characterised by continuity or the like, one should certainly ask for evidence. To that effect **Nârada**: [3] "Where the (first) occupier of property himself has been complained against, he must bring out its basis; possession by itself is sufficient in the case of those who have obtained in successive heritages." 'The basis' *i. e.* the foundation; in short, the title. 'Sufficient' *i. e.* by reason of the existence of continuity and the like established on evidence. 'In the case of those who have obtained', *i. e.* in the case of the fourth and the following. **Bṛhaspati** [4] also: "What has been held in possession without interruption by three generations (in succession), in such a case it is not necessary to prove title; possession is decisive in such a case". In such a case the determination of title for the fourth and the others need not necessarily be made; since in that case, possession descended from three generations and by reason of its possessing the characteristics of continuity etc. when so established, is decisive. The meaning is that even without the determination of title, it is proof by itself independently. For, the **Same Author** [5] says:

1 This text in exactly this form has been assigned to Hârîta in the Mitâkṣarâ. (see text p. 22. ll. 23–25). A text of Nârada, however, is found in his Smṛti with a slight variation viz. instead of यद्विनाममत्यन्तं the text there reads यदप्यन्यायेनापि यदुक्तं (see Ch. I. 91).

2 Ch. IX. 26. 3 See Ch. I. 90. 4 Ch. IX. 27.

5 Ch. IX. 28.

"In suits regarding immovable property, (possession) held by three generations in succession, should be considered as valid, independently by itself, and makes (valid) evidence in the decision of the cause." 'Independently by itself', *i. e.* not dependent upon the (evidence) which was the basis of his title. **Kâtyâyana** also: "Possession has been declared to be of two varieties, with title, and without title; that which has continued for three generations is independent by itself (even) without a title; while the other is with title." "With title" *i. e.* whose title has been firmly established.

Indeed, though independent by itself, it is certainly with a fixed title, as the title is determined by its own solidity.

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No, not so; for in the case of long-continued possession for a period beyond memory, by reason of its having the special characteristics of continuity etc., there is an absence of firmness as to the whole. Nor also should it be said that in the case of the fourth and the rest following, proof of its possession should also be exhibited. Since the necessity of the establishment of possession beyond (human) memory has been negatived in the **text**. "The Son's son and the rest, however on no account". And also in the **text**[1]: "Possession by itself is sufficient (proof) in the case of those who have obtained it in (hereditary) succession from (his) ancestors," the rule as to the establishment (of title) being laid only in regard to possession within the period of (human) memory. Therefore, possession independently by itself has an undetermined title. How then can it be (taken as) evidence of ownership? The answer is: even in the absence of a title, the evidentiary value of such kind (of possession) has been admitted by reason of the extreme impossibility of the alternative (as to the necessity) of a title; as also by reason of the absence of an invalidating circumstance viz. the certainty of an absence of title. As in the case of a heinous offence or the like, on account of an absence of certainty merely about a false aversion, the evidence of witnesses is desired, as in the **text**: "All are (admissible as) witnesses in cases of adultery, robbery, abuse, and violence," so here also. Thus everything is alright.

THE ANSWER.

ANOTHER OBJECTION

Hence also **Kâtyâyana**: "Long continued possession (though) not well known, one should not disturb out of covetousness." 'Not well known' *i. e.* as regards its origin or title.

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1 Of Nârada see above p. 133, ll. 20–21.

It comes to be stated this : as even where a decision was reached (but) which was obtained by deceit, the disturbance of possession is desirable in conformity to the new decision, and not so of a long-continued (possession). **Hârîta** also : "Even without a justificatio ı, what was held in possession by the father, or also by the brother even, that cannot be taken away when it has devolved upon the third." The meaning is that when it has devolved 'beyond the third.' Hence also **Nârada** :[1] "Without a justification even, what has been held in possession by the father and his three predecessors, never can that be taken away which has descended in succession for three generations." The meaning is, that what was enjoyed in possession for three generations prior to and along with the father, it is impossible to say that it was without justification ; what more about being taken away ?

As for what has been stated by the **Same Author**[2] :

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"With a clear title, possession obtains an evidentiary value ; possession with a title which is not clear, never makes (any) evidence (of ownership)," that has a reference to possession which has not descended for three generations; for if it were to be held to apply to possession merely, it would be in contradiction with the several texts aforestated, and in contradiction to the text of **Yâjñavalkya**[3] also viz : "Title is superior to possession, excepting where it (*i.e.* possession) has descended from a line of ancestors."

As to what has been stated by **Bṛhaspati**[4] : "One whose possession has passed through three lines, and is duly substantiated by documents, possession of this character is equal to the gift of the Brahma ; never can that be taken away", that has a reference to possession for three generations which has not extended beyond the period of memory. As to what, moreover, has been stated by **Nârada** :[5] "He, however, who holds possession without title, even if it be for many hundred years, the ruler of the land shall inflict upon that sinful man the punishment ordained for a thief," that has a reference to possession by any means whatever, in regard to matters which have been definitely declared to be not the basis of a title, as the expression 'without title' has been taken as for granted.[6]

Possessions which have been definitely declared to be incapable of substantiating a title have been pointed out by the **same**[7] **Author** : "What has been deposited with a third person to be delivered ultimately to the owner (*Anvâhita*), stolen property, what has been (held as) a deposit, what

1 Ch. I. 91. 2 Ch. I. 85. 3 Book II. 27. 4 Ch. IX. 29.
5 Ch. I. 87. 6 सिद्धवत्—taken as established. 7 Ch. I. 92.

is held by force, loans for use, and what is held in possession during the absence of the owner, these are the six (ways) in which possession is without a title". *Anvâhitam i. e.* what was made over for giving to another; 'loan for use' *i. e.* ornaments &c. of another brought for use; 'held by force', *i. e.* held in possession under the strength of the King's favour or the like. Possession of this character, although continued for a long time, has no evidentiary value. So also the **same Author**: "Where a village, land, or a house also has been in the possession of (any) one as descended in hereditary succession, otherwise than under the King's favour, such possession should not[1] be passed to another". 'Under the King's favour' *i. e.* by an act of injustice, is the implication.

To that effect also **Saṁvarta**: "What was given to another by the king through anger or avarice, or through circumvention, or when pleased, such shall not acquire validity". Where, indeed, land of another has either through anger etc., or out of pleasure, been given by[2] the king to him for enjoyment, that shall not be regarded as valid for the person in possession, even after for a long-continued possession; this is the meaning.

In this manner also, the possession of one in contradiction to the king's edict shall be regarded as invalid. To that effect also **Bṛhaspati**[3]: "He whose possession has passed through three lines, and has been inherited from his ancestors, cannot be deprived of it, unless a previous grant should be in existenece".

As to the text of **Pitâmaha**: "(Better) than a document passed in one's own hand, is a peoples' document (*Jânapadam*); but superior to that is the king's edict (*S'âsanam*); higher than that is possession for three generations; (these) are (in order) regarded as proof of title, each of a higher Degree", that has a reference to possession which has devolved in succession under a general repute, and where a well-known (source of) title has not been definitely established; otherwise there would be contradiction with the aforestated texts.

In this manner possession the title to which has been proved by former holders, should be regarded as better evidence. To that effect is **Bṛhaspati**[4]: "That possession is valid in law which is uninterrupted, and of long standing; interrupted possession even is (regarded as valid) if

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1 There is a misprint in the text: for नदूक्तपरे read न तदुक्तं परं.

2 i. e. when the same property had been granted to a different person by the King.

3 Ch. IX. 30. 4 Ch. IX. 31.

it had been substantiated before". The meaning is, that which has been of a long standing and the title to which had been established by a former holder, such a one, even if interrupted has a valid (legal) force.

Vyâsa also: "Land, the title to which was substantiated by the acquirer when complained against, such land when obtained from his son must never be taken away on any account". The order of words is that it should not be taken away from his son. When, however, it was not substantiated by the acquirer when complained against, then title to it should be established by his son who has been in long continued possession just like the acquirer himself. So also **Bṛhaspati**[1]: "The acquirer should establish title by a document; his son, however, (by) possession only; if when complained against he dies, his son should duly establish it". The meaning is that by reason of a previous complaint (having been made), possession was (rendered) unsubstantial, and in such a case establishment of that alone would not establish a title. and therefore they should establish it. The mention of a document is intended as pointing to a witness also; he also has an evidentiary value (in a proceeding) for the establishment of the title of the acquirer.

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Nârada[2] also: "Of a litigant who has died when the suit was filed against him, the son should prove the title, (since) the point at issue will not be established by (mere) possession". The meaning is, that just as by the acquirer the title can be established only by means of documents and witnesses, in the same manner. The mention of the son is intended to indicate one who takes the property. Hence also says **Yâjñavalkya**[3] "If a person happens to die when a suit was filed against him, his (legal) heir should prove it. In such a case possession is no evidence (of title) if it is not established by a proper origin". That title, even the fourth man also must establish. Since, in such a case, possession by itself alone has not been declared as evidence of title.

Thus, however, what has been stated by **Nârada**: "In the beginning (a legal) transfer is a proper (source of) title; in the next stage, however, possession with title; and possession which is continuous and has been for a long time is above a (good) title", that should be regarded as having a reference where there has been no decision of an impeachment against the acquirer. The literal meaning, however, has been pointed out by the

1 Ch. VIII. 27.
2 Ch. I. 93.
3 Book II. 29.

Saṅgrahakâra: "Of one who has made the acquisition within the prescribed period, title is the most important; of him also, in the case of the third generation from himself, possession is good where title is clear; and possession which has continued uninterruptedly is good evidence in the case of the fourth; possession, where title has been abandoned has been considered as paramount by itself alone". 'Of one who has made the acquisition' i. e. of the acquirer; 'within the prescribed period' i. e. within the period consisting of thirty years; 'most important' i. e. paramount; 'where title is clear', i. e. where title has been tested by proof. That possession which has devolved continuously, and which has been long continued, in the case of the fourth man and the rest, is good evidence; such (possession) where title has been decisively proved 'to have been abandoned is paramount', is quite adequate for the decision of ownership; this is the meaning of the half of the second verse.

As to what has been stated by **Vyâsa** viz.: "Possession which was enjoyed for twenty years by the owner, and was not broken [1]; such (possession) is (called possession) for one generation; when two-folded however, it is (called) for two generations; and for three generations when trebled; thereafter, title should not be inquired into", that should be observed in the case of possession by the fourth man or the like for more than sixty years; and in the absence of persons in whose time the beginning was made, and when a necessary inference arises for a long-continued possession. Otherwise there would be a contradiction with the **Text** [2]: "In cases (falling) within the memory of man possession in the case of land, is regarded as evidence of ownership when it is with title". Thus, moreover, it is to be borne in mind, that a period of a hundred and five years being stated to be a period within (human) memory, should be regarded as according to the general opinion.

Thus in the **Smṛtichandrikâ consideration about possession.**

Now the **Characteristics** of **Witnesses. Sâkṣhilakṣhaṇâni.**

There **Manu**: [3] "What kind of persons should be made witnesses in suits by moneyed men, I shall fully describe these, and also in what manner truth should be spoken by them." The meaning is that I shall describe the characteristics of witnesses as well as the rules regarding their examination.

1 There is a mistake in the print. Instead of स्वामिना व्याहता read स्वामिनाऽव्याहता.

2. Of Kâtyâyana (See above p. 130. ll. 13–14).

3 Ch. VIII. 61.

There, first **the Author** [1] points out their characteristics: "Householders, persons with male issue, and indigenous inhabitants of the country, be they Kṣhatriyas, Vaiśyas or persons of Sûdra birth, knowing the point, deserve (to give) evidence, and not any persons whatever, except in cases of [2] urgency." 'Indigenous' *i. e.* well established in life; 'knowing the point,' *i. e.* those to whom the point to be established is personally known; as the **Same Author** [3] has said: "Evidence in accordance with what has actually been seen or heard is admissible." In the words 'householders etc.' the masculine gender is intended to be expressed, as it is in regard to the point to be dealt with.

PAGE 76* Hence also **Nârada** [4]: "Of respectable families, straightforward, and unexceptionable in their descent, actions, and fortunes, the witnesses shall be clean, and unimpeachable men with a pure mind." The meaning is, that men of this type should be witnesses (in events or transactions) regarding debts etc.

So also **Vyâsa**: "Men knowing the law, having male issue, indigenous, of a respectable family, truth-speaking, engaged in the *S'rauta* and the *Smârta* performances, from whom (feelings of) hatred and jealousy have entirely disappeared, who are *S'rotriyas*, unharmful, who are wise, not given to travelling, youthful, should be made witnesses in regard to debts and the like by a wise man." *S'rotriyas* *i. e.* those who (can) repeat the vedas.

Persons of the type as aforestated never resort to crookedness; so says the **Same Author**: "Having come to know the transaction, the utterers of false documents who are adepts in (their knowledge of) the country and the times, make a counterfeit document; these, therefore, should never be (made) witnesses." **Kâtyâyana** also: "Those whose family and character are well known, who are free from (the feelings of) covetousness or temptation, who are truthful, pure, and men of high status, the statement of these is without (room for) a doubt."

The plural number in the expression 'of these' is intended to demonstrate that the statement of a witness or two is not so decisive. Hence also **Manu** [5]: "(It) should be substantiated by more than three witnesses

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1 Ch. VIII. 62.

2 अनापदि. आपद्—literally means a misfortune, distress. In verses 69–70 in the same chapt Manu indicates these cases (see page 145. ll. 21–25 further on).

3 Ch. [illegible] 74. 4 Ch. I. 153. 5 Ch. VIII. 60.

in the presence of the king and the Brâḥmaṇas." 'Substantiated' *i. e.* proved. Three, below *i. e.* lower than whom, such are 'more than three.' The meaning is that a number less than three is not proper in the case of witnesses.

As to what has been stated by **Bṛhaspati** [1]: "Nine, seven, or five should they be, or four, or three only; or two well known *S'rotriyas*; (but) one should never examine one at any time," there, 'two' has a reference to subscribing and secret witnesses. Since, thereafter says the **Same Author** [2]: 'Of subscribing and secret witnesses, there should be two; three, four, or, five of those who have been entered [3] (in the deed), spontaneous, [4] reminded, [5] family [6] witnesses, and indirect [7] witnesses." The distinction between a subscribing witness and the others will be stated (hereafter).

As to what has been stated by **him**: "A messenger, a holder of the clock, one who had witnessed the transaction, a single one as a witness may furnish valid proof; as also a king, or the President of the Court." 'Holder of the clock' *i. e.* the accountant; 'president of the Court' *i. e.* the Chief Judge; as also by **Vyâsa**: "One of pure actions, also one knowing (the principles of) law, a witness whose statements have been tested, even one may be good evidence in trials for heinous offences particularly"; and also by **Kâtyâyana**: "One (however) who was (taken) in (confidence) at (the time of) a deposit, such a one may be cited even though alone, and in the case of a loan on a request, one who was sent by the plaintiff as a messenger, may be admitted as a witness though one only. One by whom a deposit was duly placed, that should be proved by the (testimony of) him alone; in the case of a dispute in regard to it, he alone, singly has been declared as good evidence"; all this has a reference to a witness consented to by both. For, like as in the case of many, so in the case of one consented to by both, the suspicion of unreliability is dispelled.

Hence also **Nârada**: "Or one who is approved of by the two litigants, such a one although one only, may be examined as a witness in a Court." In this manner, it should be construed that the rule limiting the number, viz, 'not less than three,' has a reference to witnesses other than the subscribing, the secret, and the one consented to by both, as the alternative of a

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1 Ch. VI. 16. 2 Ch. VII. 17.

3 लेखित—(see Ch. VII. 4). 4 Defined by Bṛhaspati Ch. VII. 9. यदृच्छ.

5 See Bṛhaspati Ch. VII. 6 for स्मारित. 6 See Brhaspati Ch. VII. 7—कुल्य.

7 See Bṛhaspati Ch. VII. 10—उत्तरसाक्षी.

less number has been allowed in the case of a witness assented to by both, as also in the case of a secret witness. Hence also the **Saṅgrahakâra**: "In all transactions, witnesses should be made commencing with three; there is a prohibition against two, or one; (but) even one (may be admitted) when assented to by both." The meaning is that witnesses other than the subscribing and the secret should be made commencing with three.

In continuation of (the subject of) witnesses says **Nârada**:[1] "A Brâhmaṇa, a Kṣhatriya, a Vaiśya, the Śûdras also, who
PAGE 77* are irreproachable, each one shall be witnesses for their own *varṇa*, or all again for all (*Varṇas*)." The meaning is that when possible, the witnesses should be of the same *varṇa* as that of the person transacting. Thus in non-*varṇa* communities also, these should be of the same community as of the transacting person, vide the Smṛti of **Yâjñavalkya**:[2] "Each respectively according to their caste or class, or all for all (castes and classes)."

The use of the words *Jâti*, 'caste', is intended as inclusive (by an extension) of *S'reṇis* and the like also. Hence also **Nârada**:[3] "Among companies (of artizans or guilds of merchants), artizans or merchants shall be witnesses; members of an association, among other members of the (same) association; among those living outside, persons living outside; and women (shall be) witnesses among women". Hence the **Same Author**[4] states an exception: "And if in a Company (of the citizens or guild of merchants), or in any other association any one happens to incur enmity (of his associates) their testimony shall not be (admitted) against him; for indeed they are all (his) enemies." The meaning is that among *S'reṇis* etc. those who entertain hatred against any one, these shall not be witnesses against him. The use of the words *S'reṇis* etc. is intended to point to *Varṇa* etc. Also the use of the word enemy is intended by an extension to include those who have a motive to depose against facts.

Hence also **Manu**:[5] "Trustworthy men of all the *Varṇas* should be made witnesses in law suits; men who know (their) whole duty and are free from covetousness; he should however reject the opposite (characters)." 'Trustworthy' *i. e.* others than cheats. 'The opposite,' *i. e.* who are interested in false causes; the meaning is that one should exclude these.

The **Same Author**[6] mentions these: "Those must not be made (witnesses) who have an interest in the suit, nor *Âptas*, familiar (friends),

1 Ch. I. 154. 2 Book II. 69. 3 Ch. I. 155.
4 Ch. V. 156. 5 Ch. VIII. 63. 6 Ch. VIII. 64–67.

companions, nor enemies (of the parties), nor men exposed as criminals, nor persons suffering under (severe) illness, nor those (morally) tainted. The king cannot be made a witness, nor the mechanics and actors, nor a *S'rotriya*, nor a student of the *vedas*, nor (an ascetic) who has given up (all) connection (with the world), nor one wholly dependent, nor one of bad fame, nor a *Dasyu*, nor one who follows forbidden occupations, nor an aged (man), nor an infant, nor one (man alone), nor a man of the lowest (*Varṇa*), nor one deficient in the organs of sense; nor one extremely grieved, nor one intoxicated, nor one tormented by hunger and thirst, nor one oppressed by fatigue, nor one tormented by passion, nor a wrathful man, nor a thief." "Who have an interest in the suit' *i. e.* who have an interest in the point under dispute.

The *Âptas*, familiar (friends) however, have been pointed out by **Kâtyâyana**: "Those who subsist upon (contributions made by) him, those who do service to him or work for his benefit, those who are his relatives friends, or dependents, are his *Âptas* (familiar friends), and therefore are not (competent) witnesses." 'Companions,' such as sureties and the like; 'enemies,' *i.e.* of any one of contending parties; 'Exposed as Criminals,' *i. e.* uncovered elsewhere as false witnesses; 'tainted' *i. e.* convicted of having committed a heinous sin (*Mahâpâtaka*). A king is forbidden as he is engrossed in numerous occupations; 'an artisan' *i.e.* one who subsists on his art, such as a goldsmith and the like; 'an actor, *i. e.* one who enters upon a stage; these two are prohibited as they are amenable to a money payment. *S'rotriya* here intended to be expressed is one who is intensively devoted to the performance of (religious) acts, and not a (mere) repeater of the Vedas, as such a one has been stated to be (admissible as) a witness. *Liṅgastho*, a celibate student, and an ascetic also; 'one who has given up all connection with the world,' *i. e.* a hermit, and the like. In regard to these *i.e.* the *S'rotriya* etc. the reason of a likelihood for them to speak falsely is absent, still, their exclusion is to be understood on the strength of the express text. 'One extremely grieved', *i.e.* who is afflicted by a mental disease; 'one of bad fame' (*vaktavyaḥ*), *i. e.* whose body has become deformed on account of leprosy or the like. *Dasyuḥ i. e.* one given to cruel actions; 'one who follows forbidden actions'; *i. e.* one who does acts which are against the *S'âstras*; 'the aged,' *i. e.* one whose intelligence has deteriorated on account of oldage; 'an infant', *i. e.* one who has not completed his sixteenth year; 'one', *i.e.* he who is not followed by either of the two disputants; 'lowest', such as a *Chaṇḍâla* and the like; 'one

deficient in an organ of sense', such as, the deaf and the like. 'One extremely grieved, and the like, are clear. Their differentiation has been stated before ; (the same) should be contexted here also. **Nârada** [1] also states those who should be avoided : "A slave, an imposter, one not admitted to a *S'râddha*, the aged, a woman, an infant, a wheelman, the intoxicated, an idiot, a lunatic, one distressed, one who sacrifices for the (entire) village. One engaged on a long journey, a merchant who travels into transmarine countries, a religious ascetic, one who is sick, a couple[2], one (alone), a *S'rotriya*, one who neglects the rules of daily conduct, a eunuch, an actor ; an atheist, a *Vrâtya*, one who has abandoned the fire, and the wife ; one sacrificing for those for whom a sacrifice must not be

PAGE 78* performed, and who has one plate ; an associate, an enemy, a spy, a kindred, or one connected by the same womb. One who has formerly been discovered to be an evil-doer, a public dancer, one who lives by poison, a snake-charmer, a poisoner, an incendiary, a minor, the son of a Sûdra woman, one who has committed an *Upapâtaka* (a minor offence) ; one oppressed by fatigue, a ferocious man, one deserted, one penniless, a member of the lowest[3] class, one leading a bad life, a student who has not completed his course of study, an idiot, an oilman, a seller of bread[4] ; one possessed by a demon, an enemy of the king, a weather-prophet, an astrologer, a malicious person, one who sells himself, one who has a limb too little, or a pimp, one who has bad nails or black teeth, one who betrays his friends, one suffering from white leprosy, a rogue, a vintner, a juggler, an avaricious or cruel man, an enemy of a *S'reṇî* or of a *Gaṇa*; one who takes animal life, an idol[5]-maker, a fool, an outcast, a forger, a cheat, an apostate, a robber, a king's servant, a Brâḥmaṇa who sells human beings, poison, meat, bones, milk, water, and ghee ; as also a twiceborn person who is guilty of usury; one who has swerved from his own duty, a *kulika*, an informer ; one who is in the service of low people, one who quarrels with his father, one who causes dissensions ; these are inadmissible as witnesses". 'An imposter' (*Naikṛtikaḥ*), who habitually picks holes in others : *Châkrika*, a *Vaitâlika*

1 Ch. I. 178–187.

2 युग्मैकः another reading is व्यङ्गैकः, defective.

3 निर्धूत—another reading is निर्धन.

4 पौपिकः explained further on (Text p. 78, l. 19) another readings is मूलिकः.

5 चित्रकृत् another reading is चर्मकृत्.

(*i. e.* magician or a Minstrel); 'a transmarine trader', one travelling by a boat ; (two) couples, particularised by duality. The word *ekasthâli*– 'One has one plate', may be dissolved in two ways : one for whom there is cooking pot along with one of the parties in dispute, or, one who has one plate for dinner, *i. e.* cooking tôgether, or in short eating together ; 'an enemy spy' *i. e.* one who moves among the enemies, *i. e.* in short, one who is connected with the opponent.

The *Sanâbhayas* 'connected by the same womb' have been described by **Kâtyâyana** : " The sons of the mother's sister, the sons of the uterine sister, and the maternal uncle; these are called uterine relations. One should not appoint these for giving evidence as witnesses." 'A public dancer' i. e. an actor ; 'one who lives by poison' i. e. one who is engaged in storing, preserving etc. of poison; 'a snake-charmer,' i.e. the snake-catcher; 'poisoner', one who administers poison. ' An incendiary', i. e. 'one who sets fire to a house ;' a miser i. e. a niggardly person. ' Oppressed by fatigue', i. e. dejected in mind ; ' deserted ' i. e. one who has been excommunicated ; ' member of the lowest class,' i. e. born of a reverse union in marriage. 'One leading a bad life' i. e. one whose conduct is vicious ; ' a student who has not completed his study,' i. e. the celibate student who has taken a perpetual vow ; ' an idiot ' i. e. one with a dull intellect ; 'an oilman' *i.e.* a sesamum crusher, i. e. in short, a great mechanic ; ' a seller of bread' i. e. the vendor of cooked viands, cakes etc. ; 'a weather prophet' i. e. one who prophesies rainfall, i. e. in short who judges by signs ; 'an astrologer', i. e. one who lives by a knowledge of the stars ; 'a malicious person' i. e. one who brings out the faults of others ; ' a pimp ' i. e. one who for his livelihood, prostitutes his wife ; 'a vintner' i. e. a seller of intoxicating drinks ; 'a fool' i. e. one begging after taking hold (of an image) of a deity ; ' a cheat ' i. e. an imposter ; 'an apostate', i. e. who has turned back from asceticism ; ' an informer, i e. one appointed by the king for the purpose of reporting the faults of others ; ' one who causes dissensions,' i. e. a villain. Others are well known.

Kâtyâyana also states certain persons (who are) inadmissible as witnesses : "Members of the same family, as also persons having a connection, a son-in-law, the sister's husband, the father, a kindred, the paternal uncle, the father-in-law, and the gurus likewise ; those who are appointed to town, village, and the country, as also to positions (of authority), as also those who are favourites ; one must not examine these (as witnesses) ; they are devoted and are king's men". The meaning is

that those (enumerated) commencing with the men of the family' and ending with 'the king's men', should not be asked to give evidence as witnesses; *i. e.* should not be admitted as witnesses.

Indeed, this extensive enumeration of non-witnesses is profitless, as by the statement itself of the characteristics, the incapacity of those who do not possess the characteristics have been evidently proved. Yes, that is so. Still, where there is an absolute absence of witnesses as prescribed, there, one may have the evidence of any man as a witness, as has been permitted by the text a **Manu**[1] : "Not any one except in cases of urgency" in such a case the text "Not those having a connection with the point, nor the 'Âptas' etc. have been set out; thus this detailed statement has certainly a (justifiable) purpose.

AN OBJECTION

THE ANSWER

In this way, moreover, it should be construed that in the absence of witnesses possessing the characteristics (as stated), the evidence as witnesses is prescribed only of those who are free from the prohibitions. Hence also, of these a mention has been made by **Vyâsa** : "An ordeal generally ends contrarily by (reason of) medications and charms; but never indeed can there be miscarriage (of justice) by witnesses nor vitiated by the existence of faults".

As to what, moreover, has been stated by **Manu**[2] : "But any one may give evidence for the disputants, who has personal knowledge (of the happening) in the interior of a house, or in a forest, or even in regard to (an act which resulted in) the loss of life, by a woman even when (proper evidence is) not available, or by a minor, or by an aged man also, or by a pupil, or by a *bandhu* even, by a slave, or by a servant (engaged on wages)". 'Who has knowledge' *i. e.* who knows about the matter; as also by **Nârada**[3] : "Those enumerated (above)to be inadmissible as witnesses, such as slaves, imposters, and others, may even be (admitted as) witnesses, after realising the imortance of the matter in hand". 'Importance of the matter' *i. e.* in the absence of one knowing fully the matter in hand; all this has a reference to spasmodic acts, such as heinous offences and the like, as upon such happenings, men of the prescribed characteristics are difficult to be had. Hence also the **Saṅgrahakâra** : "When the best and those of middling (qualities) are not available, even persons prohibited may be admitted

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1 Ch. VIII. 62. 2 Ch. VIII. 69-70. 3 Ch. I. 188

as witnesses in (cases of) heinous offences, having regard to their connection with the time and the matter (under inquiry)".

In this connection **Uśanâḥ** states a special rule : "A slave, a blind man, a deaf man, a leper, a woman, an infant, an aged man, and the like—these even when not having any intensive connection, are admissible as witnessee in the case of a heinous offence". Not having any intensive connection, *i. e.* without any friendly feeling or the like. 'In the case of a heinous offence,' *i. e.* heinous offences and the like.

If they have an intensive connection, these must certainly be excluded in the case of heinous offences and the like. Hence also **Nârada** [1] : "Among these also, not a minor, not one alone, nor a woman, nor a forger, nor a relative, nor also an enemy; (for) these may give false evidence". The meaning is, that among the slaves, imposters etc. even, those who are likely to have evident motives for (telling) an untruth, such as the minors etc. should be excluded.

Those who have obvious motives for (telling) an untruth, have also been pointed out by the **Same Author** [2] : " A child, through ignorance, a woman, from want of veracity, an imposter, from habitual trickery, may speak falsely, (as also) a relative from affection, an enemy from (a desire for) wreaking vengeance." 'From want of veracity' *i. e.* from a habit of want of veracity. By this it has been pointed out that the reasons are, ignorance, want of veracity, want of faith in *dharma*, intensively evident feelings of affection or hatred, and not minority etc. Thus, in the case of one even, the oneness is not the obvious reason for a falsehood (in the testimony), but on the other hand covetousness; as says **Manu** [3] : " One if avaricious shall not be a witness." Thus it should be construed in regard to the cases of heinous offences, that when the faults of ignorance, want of veracity, and the like exist, slaves and the like also should be cut out ; in the absence of these (causes), however, minors and the like even may be taken up.

As to what has been stated by **Manu** [4] : " In all cases of heinous offences (*Sâhasas*), as also in cases of theft and adultery, and in cases of abuse and assault, one must not examine the (competence of) witnesses (too strictly)" ; as also what has been stated by **Kâtyâyana** : " In cases of the breach of the King's command, of

1 Ch. I. 190. 2 Ch. I. 191.

3 Ch. VIII. 77. Here, there is a mistake in the print, for एकोऽलुब्ध read एको लुब्ध &c.

4 Ch. VIII. 72.

adultery, as also of heinous offences, and also in cases of theft and the two kinds of violence, one must not indulge (too much) in examining (the capacity of) witnesses," that negatives the testing (on the grounds) of a householder, and not also of the tests of ignorance, *i. e.* as it would conflict with the aforestated text.

As to what, moreover, has been stated by **Kâtyâyana**: "In cases of transactions of a stable character, such as relating to debts etc., one may examine (into the capacity of) witnesses, in cases of violence and similar matters of urgent character also, an examination has been stated at some palces," that is intended for laying down a rule as to the examination in cases of *Sâhasa* and the like, where upon a defeat, there is the possibility of a heavy punishment, such as death etc., and also on account of the reason that being enumerated along with (cases of) debt etc. and the non-possibility of a general rule regarding the test as to the faults of ignorance etc.

As to what has been stated by **Yâjñavalkya**[1]: "In cases of adultery, theft, insult, and a *Sâhasa* (a heinous offence), any person may be a witness," that also is intended for dispensing with the (rules as to the) examination of the merits (of the witnesses).

Thus in the **Smṛtichandrikâ**, the **Characteristics** of **Witnesses.**

PAGE 80* Now the **varieties of Witnesses—Sâkṣhibhedâḥ.**

There **Kâtyâyana**: "One entered in a document, and another who is not a part[2] of it—thus a witness is connected in two ways." **Prajâpati** also: "A witness is of two varieties, 'made' is one, and the other 'not made'; one entered in a document is 'a made,' and the other is called 'not made.' 'One entered in a document,' *i. e.* such as a subscribing witness and the like. To that effect **Nârada**[3]: "A subscribing witness, one who has been reminded, a casual[4] witness, a secret witness, and an indirect witness; thus a witness has been described in the Smṛtis as of five varieties"

1 Book II. 72.

2 उत्तरसाक्षी—Dr. Jolly translates, as an indirect witness. This term has been variously interpreted and defined by Bṛhaspati, Hârîta and others e. g. Kâtyâyana thus साक्षिणामपि यः साक्ष्यमुपर्युपरि भाषते । श्रवणाच्छ्रावणाद्वाऽपि स साक्ष्युत्तरसंज्ञितः ।।

3 Ch. I. 150. See Brhaspati Ch. VII. 3. Kâtyâyana defines as follows :—
आर्थिना स्वयमानीतो यो लेख्ये संनिवेश्यते । स साक्षी लिखितो नाम समाख्तिः पत्रकादृते ।।

4 यदृच्छाभिज्ञः—Dr. Jolly "spontaneous witness". Kâtyâyana describes him as प्रसंगादागतः.

Likewise the varieties of witnesses 'not made' have also been pointed out by the **Same Author**:[1] "A witness 'not made' has been described by the sages to be of six kinds: The village, the chief Judge, the king; one who has inside knowledge of the transaction as also one who has been deputed by the claimant, and the members of the family, may also be witnesses in family disputes."

There, presently **Bṛhaspati**[2] states the characteristics of witnesses 'made'[3]: "One who has entered in a deed his caste, the name of himself, and of his father also, as also his place of residence, is called a *Subscribing* witness. One who after being invited to be present at a transaction of debt, deposit, purchase, or the like, was made a witness, and who is repeatedly reminded of it, is called a witness who is reminded. While a transaction was being concluded, one who had arrived by himself, and declares that 'the attestation was mine' is called a witness *by chance*.[4] One who, screened behind a partition, is made to hear the declaration of the debtor; and denies that occurrence is called a *secret* witness. Where a person, while about to go abroad, or being on the point of death, communicates to another what he had heard, that witness is called an *Uttara* witness."

In regard to a subscribing witness, however, **Hârîta** states a special rule: "Even after a long interval, a subscribing witness may establish the fact; he may write himself, if literate; and if, however, illiterate he may have it written by another."

As to what has been stated by the **Same Author** viz.: "Of a 'reminded' witness, the evidence can establish a fact as far as the eighth year, similarly the evidence of a witness who had arrived by chance can establish the fact as far as the fifth year; so of a secret witness, the fact can be proved upto the third year, and of the *Uttara* witness within one year," that should be understood to have been stated as the contention of the first position; since the **Same Author** says later on: "Nor there has been observed any limit of time in regard to witnesses, for men knowing the Śâstra declare witness evidence as dependent upon their memory. A witness whose intellect, memory, and ears have not been blurred, such a one deserves to be admitted as a witness for giving evidence even after (the lapse of) a very long time."

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1 Ch. V. 151–152.

2 Ch. II. 3, 6, 9, 10. 3 कृतानां.

4 यादृच्छिकः For Dr. Jolly's translation see S. B. E. XXXIII. p. 300. §. 9.

By **Bṛhaspati** also, witnesses 'not made' [1] have been described: 'Where anything is spoiled or damaged on the boundary line, even though not appointed, the village may undoubtedly (be admitted to) give evidence in such a case (15). Where, after a suit has been decided, a fresh trial takes place, there the chief Judge, together with the assessors, may be (admitted as) witnesses, and not in any other case (14). Where the statements of the plaintiff and of the defendant have been heard by the King himself, he may offer himself as a witness, if there be disagreement between the two (13). Where by both the parties, an affair has been placed in trust and communicated also, such a one may be known as a witness holding the secret, as well as a common witness (12). One who hears the statement of the plaintiff and the defendant, who has been deputed as assented to by both as a respectable person, is denominated a

PAGE 81* messenger witness (*Dûtakaḥ*) (8). At the time of a partition, gift, or sale, where a member of the family is appointed by both parties being connected and on good terms with both parties and knowing the Dharma, such a one is known as a family witness (9)."

As to what has been stated by the **Same Author** [2] viz. "A subscribing witness, one caused to be written, a secret witness, one who has been reminded, a member of the family, a messenger, a spontaneous witness, an indirect witness, a stranger who has accidentally witnessed the deed; the king, the chief Judge, and (the people of) the village; thus have the twelve kinds of witnesses been declared," that has been stated, as in reference to other varieties of a subscribing witness in relation to the name etc. and the writing of the maker and of the person causing a document to be made. "A witness has been stated to be of eleven kinds, by wise men in the *S'âstra*," so has been stated by **Nârada** [3] in spite of him.

Here **ends** (the chapter on) the **varieties of witnesses.**

Now the **kind of Incompetent witnesses. Asâkṣhibhedâḥ.**

There **Nârada** [4]: "The incompetent witnesses have in law books, been mentioned by learned men to be of five sorts, viz. (witnesses who are incompetent) on account of (a special) text of law, on account of depravity, of contradiction, on account of a voluntary

1 अकृत-अकृतः Dr. Jolly's edition p. 300. Nos. 15, 14, 13, 12, 8 and 7.
2 Ch. VII. 1-2. 3 Ch. I. 149. 4 Ch. I. 157.

deposition, or of an intervening death [1]". The meaning is that by reason of a fivefold reason existing for inadmissibility of evidence, linked with it, an incompetent witness also has been pointed out by the wise men as of five varieties. Hence also the **Saṅgrahakâra**: "On account of depravity, or being prohibited by reason of his not being appointed on account of uncertainty, by reason of a defect in one organ, a witness may be incompetent in five ways: (thus) a thief and the like, a *S'rotriya* and the like, one coming by himself, one with mutually contradictory statements, one on the point of death, other than those cited, the fifth, of an intervening death". The meaning is, on account of depravity, a thief etc. is incompetant; by reason of being specially prohibited, a *S'rotriya* and the like; by reason of uncertainty, one making mutually contradictory statements; by reason of an organ being defective one an intervening death'. **Nârada** also [2]: "Thieves, robbers, dangerous characters, gamblers, assasins [3], are incompetent witnesses on account of depravity (159). Learned Brâḥmaṇas, hermits, aged persons, as also those who have become ascetics, and the like others, these are incompetent witnesses on account of a special text of law; and no special [4] reason has been given for this rule (157). A volunteer witness is he, who without being appointed to be a witness, comes of his own accord to make a statement, and is termed an informer [5] in the law books; he does not deserve to be (admitted as) a witness (161). Among witnesses who have all been summoned by the king for the decision of one cause, if their statements differ, they become incompetent witnesses on account of contradiction (160). When a cause is to be heard, and when the claimant in that cause is not in existence, who will give testimony for it? Thus the witness is incompetent on account of intervening death (162). 'Informer', (*Sûchî*), one who suggests. The meaning of the verse 'where a cause &c.' is this: In this cause, 'I have appointed this one as my witness in regard to this cause, thus what should have been communicated to the son and the like by one who was feeling an uncertainty about (his own life) himself, and in such a cause when no communication had been made, and the plaintiff was not in existence, being dead, the evidence of that witness which was declared by the plaintiff, the (new) plaintiff, such as the son and the like, not knowing who would depose in which cause and to what

1 मृतांतर—अर्थी यत्र वि न्नः स्यात्तत्र साक्षी मृतांतरः—कात्यायनः. 2 Ch. I. 159, 158, 161, 160, 152.

3 वधकाः—The Mitâkṣharâ reads वञ्चकाः 'rogues' (see Coll. p. 842. line 6).

4 See note 5 on p 848. Collections Vol. II.

5 सूची Dr. Jolly translates "a spy".

effect, and there being no definiteness, such a witness is incompetent on account of the intervening death. The use of the word plaintiff is by an extension to indicate the defendant ; so also **Vyâsa** : "Where the plaintiff is not in existence, then the witness is one after an intervening death ; or where the defendant is dead, there also a similar rule should be appied". The meaning is that when the plaintiff or the defendant is dead, his witness other than the one cited by the dying man is called a witness upon an intervening death. "When the plaintiff is dead and another is cited after death without being cited by the dying man" vide this text of **Nârada**. The use of the word 'dying' is intended as indicative by an extension also of one in normal health. Hence also **Another Smṛti** : "If a point has been communicated even by one who is sick, if it is well posted according to law, even if he be dead, in such a case a witness may be admitted in the case of six transactions such as an *Anvâhita* and the rest. Thus, moreover, what has been stated in **Another Smṛti**. "In

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the case of a deposit, an *Anvâhita*, a thing sold, or robbed, or given, or delivered on a request, as also in the case of a debt repeated by a dying man, one may interrogate a witness at the intervening death", that is intended to convey that the testimony of one who has been made to hear the point is not wiped off even if the plaintiff who communicated it be dead ; and not for laying down a rule that any witness may be admitted at times even after an intervening death; because a witness after an intervening death is impossible.

As the capacity of one as a witness who has been made to hear the point, is not lost, so also when there is a diversity among witnesses, the capacity as witnesses of the highest class certainly remains undisturbed also. To that effect also **Yâjñavalkya**[1] : "Upon a disagreement, the testimony of the majority prevails ; similarly, if the witnesses are equally divided, the evidence of the virtuous; if, however the virtuous disagree, the evidence of those who are most virtuous should be accepted (as conclusive)". **Saṅgrahakâra** states its meaning : " Either by regard to majority, or a discrimination of the qualities, should a decision be reached when there is a disagreement among the witnesses ; if these are equally balanced, there is no finality". The meaning is, that the incompetency of witnesses upon the ground of uncertainty is only when preference to a particular ground is not given among the two sets. As to what has been stated by **Kâtyâyana** : "If from among the subscribing witnesses who have been declared by the plaintiff,

1 Book II. 78.

even one of these is found to have deposed differently, all these become incompetent witnesses on account of diversity", there, it should be understood that by the word 'All' has been declared the incompetency as of all witnesses i. e. together with the one who deposed differently, and not of those only; otherwise there would be a contradiction with the *text* "Upon a disagreement of the majority"

Also that there may not occur an incompetency as a witnesss by reason of his offering himself voluntarily, and for that a declaration of (a person as) a witness must not be made by any one of whatever relation; so says the **Same Author** also: "Where a person has been declared by a man as his witness, another must not examine him (as his witness); in the absence of that person, either a deputy or a relation may make him depose." The meaning is that either the plaintiff or some one on his side should declare a witness, and not (any) other. Thus, moreover, one declared by another will be regarded, and would by an incompetent witness.

In context with this, something else also has been stated by **Nârada**[2]: "If two persons quarrel with one another, and both have witnesses, the witnesses of him shall be heard who has the right[3] to begin. If the (first) claimant should be cast at the trial, his cause proving as the weaker one of the two, then the witnesses for the defendant in the case should be examined." In this connection an illustration[4]: Where e. g. one man got a land as donation and after occupation, left it and went to another country with his family. It was again obtained by another man and occupied also. He also on account of agitation in the country etc. went to another country with the family. Again both after the lapse of a long time, tempted by desire for their share

1 Book II. 78. 2 Ch. I. 163, 164.

3 पूर्वपक्षो भवेद्यस्य—Dr. Jolly translates "who was the first to go to the Court."

4 Asahâya gives the following illustration; "A claimant declares, 'this bull which you have got is mine. He was stolen by thieves, who took seven cows along with him. If they are found among your property, they may be known by a red mark on the forehead, or by their white feet or by other signs . . . I am able to adduce four witnesses who will declare them to be mine'." The opponent replies, "Prajâpati (the Creator) has created many two-legged and four-legged beings closely resembling one another. If a superficial likeness is to be considered as evidence, I might take another man's wife into my house, because she has eyebrows, ears, a nose, eyes, a tongue, hand, and feet like my wife. This bull is born and bred in my house. I am able to adduce four witnesses from the village in which he is being kept; their statements will establish the fact that he belongs to me". In a dispute of this sort, the witnesses of him who was the first to bring the suit into the court will decide the suit. Cf. Yâjñ. II. 17, and Vishṇu VIII. 10. (Jolly).

of maintenance, returned to their (original) home, and approached a Court of law for the determination of their dispute. There one states on affirmation: 'This land was donated to me by king Harishchandra of blessed memory, when he was anointed as a king, and therefore this land is mine alone.' Or, the affirmation of the other is in this way: 'True, by Chandra of blessed memory the land was donated to him; but, however, it was obtained by purchase from him by Harishchandra and was donated to me; thus it is mine only.' Witnesses also are available for both. In such a case this **text**[1] is stated viz. "of two porsons quarrelling &c.".

This is the meaning: The party who was first in the dispute *i. e.* whose side has priority on account of the statement of his claim based on a donation at a prior date, his witnesses shall be examined by the assessors first, and not the witnesses of the other. These are (regarded) almost incompetent witnesses, as they would be deposing to a donation at a later date. When, however, it is alleged by the other party that, 'After obtaining by purchase it was donated to me, and the like', the case of the first claimant is cast down, and becomes powerless; then the witnesses of the party making a later declaration on affirmation should be examined, and not of the party making the first affirmation, as it would be useless to establish what has been proved; but on the other hand, these should be ignored as incompetent witnesses.

Thus in the **Smṛtichandrikâ** the kinds of **Incompetent Witnesses.**

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Now the **exhibition** of **Witnesses—Sâkṣhyudbhâvanam.**

There **Gautama**[2]: "In disputed cases, the truth shall be established by means of witnesses." The import of this is that after the answer (is filed), if there be witnesses, these should be pointed out by the plaintiff. These, moreover, after they are declared, if they are faulty, then they should be condemned. To that effect **Bṛhaspati**: [3] "When witnesses are summoned by the Plaintiff, if these are faulty, one may expose the faults. A litigant trying to cast a blemish on the faultless (witnesses) is liable to incur a fine of an amount equal to it." 'Equal to it', i. e. equal to the penalty for a faulty witness. Those causes, such as hatred etc. on account of which incompetency as witnesses has been stated, these are the faults of a witness. The meaning is that these if they lie concealed in the witnesses cited by the plaintiff, then these should be exposed by the defendant.

1 Of Nârada. Ch. I. 163 (see above p. 152.) 2 Dh. S. Ch. XIII. 1.
3 See Ch. VII. 24.

If, however, they are obvious, then these should be declared by the assessors themselves. To that effect also **Kâtyâyana** : "The defects in the (manner of) proof, whenever they exist should be declared by a disputant ; but the concealed defects must be made public at the time by the members of the Court, by a reference to the *Śâstra*". 'In the proof', i. e. in what is adduced as proof; "at the time", i. e. at the time of the decision.

To that effect **Bṛhaspati**: " After the witnesses have given their evidence and a decision has been given, if one starts a dispute again, the king should consider it". 'Have given evidence', i. e. by those witnesses cited by the plaintiff. The meaning is that when the decision had been declared by the members of the court upon the evidence of witnesses who are 'devoid of obvious faults'. The use of the word, 'had been declared' is intended to demonstrate that after the decision, is not the time (proper) for the faults to be pointed out. Hence also **Kâtyâyana**: " Whatever faults there may be in the documents, as well as the faults in the witnesses, as have been stated in the Smṛtis, must be declared at the time of the trial; after a statement has been made, one must not allege faults in the deponents".

For one pointing out a fault after a statement had been made, the **Same Author** states a penalty: " After a witness has made his statement in regard to the matter in issue, if one attempts to find fault with witnesses not challenged before, and also does not state the reason for so doing, he shall be mulcted in the first amercement".

One must not charge him as false or as wanting in the qualities (such as) of a householder etc.; as says the **Same Author**: "One must not challenge the evidence by untrue allegations; he may, however, challenge with faults only; if the accusation be false, he shall be punished, and shall lose the claim also." He should challenge with faults only, and not on the ground of an absence of merit; the import is that such a charge cannot destroy the reliability of oral evidence.

Hence also, in cases of urgency, the testimony of a witness other than of those prohibited has been stated to be admissible although he is not possessed of the qualities. Therefore, it should be understood that in cases regarding debts etc., not merely by the allegation of the absence of qualities, are the cited witnesses to be declared incompetent, but on the other hand, by alleging the existence of circumstances such as slavery etc. which are the causes of exclusion. In cases of a *Sâhasa* or the like, not by that even; but on the other hand, by the allegation of faults, such as ignorance, want of veracity, and the like faults only ; thus it should be construed.

Hence also, the incompetency of a witness by the exposition of the faults has been stated by **Vyâsa** also: "The faults of witnesses should be openly declared in the court by the defendant, by putting these all in writing on a parchment; and a replication to these should be caused to be made; upon an admission (of these), they do not deserve to give evidence at any time; if otherwise, these should be established by the defendant by means of proof." 'Admission,' *i. e.* admission of the fault; 'by means of proof,' *i. e.* the implication is, other than witness evidence. For, to that effect, the **Same Author**: "The fault alleged against the first (set of) witnesses if (allowed) to be established by other witnesses, there would be the fault of unsettledness, owing to the possibility of these also to be challenged by means of others." Thus the demonstration of a defect (in a witness) must not be (allowed to be) made in regard to a defect which is obvious, as it would be profitless. But, on the other hand, such assignation of a fault should be made by the members of the Court alone; so says the **Same Author**: "That which is well known to the members of the Court, or that which is well established in the world either, such fault in the witnesses may be admitted by regard to the description of the defect, as it is not likely to be proved (by evidence)." 'May be admitted,' *i. e.* by the judges; 'not likely to be proved,' *i. e.* by the defendant; for here on account of the well known character of the faults which have been alleged, their exclusion is established (by itself).

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Where, however, an allegation is made of a defect, (which is) not well known, there, if that is not proved (by evidence), the **Same Author** states a penalty: "If the defendant do not clearly establish (the defect), he should be made to pay a penalty; the witnesses against whom the fault is proved, should be excluded, as from them the privileges of the witnesses have been refuted." 'Clearly,' *i. e.* in such a manner as not establishing the fault of the witnesses; the import is that the witnesses against whom the fault has been established should be dropped, but not punished.

After the witnesses have been dropped, if the plaintiff does not contemplate other proof, then he is (regarded as) defeated, and should be punished; so says the **Same Author**: "When defeated, he should be compelled to pay (the amount in dispute) together with a penalty". If the plaintiff does not contemplate another proof in accordance with the procedure stated in the *S'âstras* when placed before the witnesses and the members of the court; 'does not contemplate,' *i.e.* (resorting to) another mode

of proof. The import is that if, however, he intends (to prove), then in the absence of human proof, success may be reached by resort to divine proof even. To that effect **Bṛhaspati**: "When a fault is alleged against a witness, the witnesses first cited should be (got declared as) cleared; after the witnesses are cleared, thereafter with them one should try the cause." 'With them' *i.e.* with (the evidence of) the cleared witnesses. By this it comes to be stated that the dispute about the defects in the proof should be decided during the course of the original trial, and not at a time subsequent to the first suit, like as a decision and a fresh trial, as a decision about a dispute regarding defects in the proof, must be given in the same suit, as it is dependent upon the first trial, as also there is no different result, and also as there is no different proceeding. For the **Same Author** [1] says: "A party whose document or witnesses are impeached in a dispute, his cause will not succeed, so long as he does not remove the objections." **Vyâsa** also: "So long as a dispute regarding all the witnesses arising in the course (of the trial) does not reach a decision, till that time one should drop the (evidence) first (adduced). In regard to the establishing of the defects of a witness whether by the defendant or by the plaintiff, there is no need of an accusation against the witness; for in that case, there would be a separate trial." Therefore, it has been established that the decision about the defects in the proof must be made in the course of the original suit only.

Thus in the **Smṛtichandrikâ** the **Setting up of Witnesses.**

The **Testing of Witnesses—Sâkṣhiparîkṣhâ.**

There **Kâtyâyana**: "The king having asked for evidence, should deliberate over it according to the principles of justice; the documents, according to the customary rules about documents, and the witnesses in accordance with the usage about the evidence of witnesses." 'By the customary rules about witness evidence,' *i. e.* by all the characteristics of witnesses. Here **Bṛhaspati** [2]: "Witnesses, who may be examined, as also those basest of mankind who must be excluded, I shall now mention these as stated in the *S'âstras*." There, presently, **He states** [3] those who should be examined: "These witnesses should be those who are always engaged in observing the performances prescribed in the *S'rutis* and the *Smṛtis*, absolutely free from the feelings of covetousness and hatred, of respectable parentage, irreproachable, and zealous in performing austerities, practising liberality, and exhibiting sympathy (with all living creatures)."

1 Ch. VII. 26. 2 Ch. VII. 27. 3 Ch. VII. 28.

Likewise, the **Same Author** [1] states these who should
PAGE 85* be excluded: "The mother's father, the father's brother also, the wife's brother, and the maternal uncle, the brother, a friend, the son-in-law, are inadmissible (as) witnesses in all (kinds of) dispute. Also persons addicted to adultery, or to drinking, gamesters (rogues), persons declared unfit [2] before, the insane, the suffering, violent persons, and unbelievers, cannot act as witnesses".

Moreover, this statement of proper and improper witnesses is intended to exhibit the admissible and inadmissible witnesses as stated by **Manu**, **Nârada** and others; hence also has it been stated that 'as mentioned in the Śâstras'. Likewise, the **Same Author** states that witnesses may also be tested from their voice etc.: "Those who often appear should be examined having regard to their voice, colour, the internal working, and the like". Among these, those who are free from any temperamental bias should be eligible as real witnesses; those, moreover, who are affected by any temperamental bias should be known to be false witnesses.

Hence also **Manu** [3]: "Of the infants, aged men, and diseased persons, speaking falsely, the judge should consider their evidence untrustworthy, likewise of persons with disordered minds". 'With disordered minds', *i. e.* unsteady. **Viṣṇu** [4] also: "By his altered looks, by his countenance changing colour, and by his random and irrelevant talk, one may know (him to be) a false witness". **Nârada** [5] also: "One, however, who, feeling [6] conscious of his own guilt, looks as if he was not well, moves from (one) place to (another) place, and runs after every one (193); who walks irresolutely and without reason, and draws repeated sighs; who scratches the ground with his feet, and who shakes his arms and clothes (194). Whose countenance changes colour, whose forehead sweats, whose lips become dry, and who looks above and about him (195). Who, as if he is in a hurry, unasked, talks too much, such a person should be recognised as a false witness, and the king should punish that sinful man severely". **Yâjñavalkya** [7] also: "One who shifts from one place to another place, licks his lips, whose forehead perspires, whose countenance also changes colour (13), who has a stammering and incoherent speech, talks inconsistently and

1 Ch. VII. 29–30.

2 पूर्वदूषिताः Another reading is सर्वदूषकाः "persons who calumniate everybody". (Jolly).

3 Ch. VIII. 71. 4 Ch. VIII. 18. S. B. E. Vol. VII. p. 50.

5 Ch. I. 193–196.

6 आत्मदोषदूषत्वात्—another reading is आत्मदोषभिन्नत्वात् 'weighed down by the consciousness of his own guilt'. 7 Book II. 13–15.

too much, who does not respond to the speech or gaze of others, and who, moreover, bites his lips (14) ; who exhibits by his own movements a perturbation of the mind, speech, body, and action, is declared to be defective and unfit to be a complainant or a witnesses (15)".

Thus if witnesses appear who are free from the defective signs, and also are endowed with the qualities for a (proper) witness, then one should come to a decision, with (the help of) these : and if they are otherwise, then by other means of proof.

Thus **ends** the **Testing of Witnesses.**

Now the **Law as to charging the witnesses.—Sâkṣhyanuyojanavidhiḥ.** There **Manu** [1] : "In the court room, in the presence of the plaintiff and the defendant, the Chief Judge should charge all the witnesses in the following manner, after kindly exhorting them". The meaning is that, according to the procedure hereafter to be stated, one should charge all the witnesses *i. e.* should make them prepared for stating facts.

He [2] states the same procedure : "What you know to have been mutually transacted in this matter between these two men, before us declare all that in accordance with the truth; for you are witnesses in this cause (80). Evidence in accordance with what has actually been seen or heard, is admissible: a witness who speaks the truth in those (cases), neither loses spiritual merit, nor wealth (74). A witness who speaks the truth in his evidence, gains (after death) the more excellent regions (of bliss), and here (below) unsurpassable fame ; such testimony is respected by Brahman (himself) (81). Or (as) a Brâḥmaṇa is among men, or the Sun among the luminous, or the head among all the organs, so truth is the best of all Dharmas (82). By truthfulness is a witness purified ;

PAGE 86* through truthfulness the religious merit increases : truth must, therefore, be spoken by witnesses of all the *varṇas* (83). The man who, while giving evidence, a learned husbandman does not feel any doubt, Gods do not regard any other man in this world as superior to him". 'Or a Brâḥmaṇa' *i. e.* like a Brâḥmaṇa ; similarly in the expression, 'or the head', the word 'or' (*vâ*) should be taken as indicative of the standard of comparison. The meaning of the last verse is that the witness, while he is giving evidence, a learned witness does not entertain any doubt (about him), the gods do not regard any other man in this world as superior to him.

1 Ch. VIII. 79. 2 Ch. VIII. 80, 74, 81-83, 93.

Nârada [1] also : "Truth is the greatest gift, truth is the highest austerity, truth is the highest duty for the people; so says the Śruti (214). The Gods are collecting truth, while men have been stated to be collecting falsehood. In this very world does one obtain divine eminence, whose mind is permanently fixed in truth (215). There is no higher virtue than veracity, nor a heavier crime than falsehood. In regard to his duty as a witness, therefore, one must speak the truth alone (226)".

Vyâsa also : "For those appointed to give evidence, the divinities await in heaven, and his ancestors also lie suspended out of fear lest he may state a falsehood. By truthful statements, they go high up; otherwise, however, they go down; therefore, truth should be stated by you in the presence of the members of the Court".

Manu [2] also : "He who gives false evidence is bound fast by Varuṇa's fetters helpless for one hundred births; therefore, a witness should speak the truth (82). The soul itself is the witness of the soul, and the soul is the ultimate God of the soul; despise not thine own soul, the supreme witness of men (84). The sinners, indeed, think in their minds 'no one whatever sees us'; but the gods thoroughly observe them, as also the inner men in them (85). The sky, the earth, the waters, the heart, the Moon, the Sun, the fire, Yama, and the wind, the night, the twilights, justice also, know the conduct of all corporal beings (86)" 'A hundred births' *i. e.* as long as a hundred (of) births.

Nârada also : "Kubera, the Sun, Varuṇa, Śakra, Vaivasvata and the rest, as also the guardian deities of the world, observe perpetually with divine vision". The import is that therefore deception is not easy. **Utathya** also : "That witness who gives false evidence in this world, undoubtedly he certainly carries the seven generations on both (sides) to the lowest place. Whatever sin lies accumulated for seven births in the body, one who gives false testimony takes all that in entirety". **Bṛhaspati** also : "A false member of the Court, and a false witness, and a Brâḥmicide are stated to be equal (in sinfulness); a fœticide, and also a robber are not declared to be more sinful than these". **Manu** [3] also : "A witness who deposes in an assembly of the Âryas anything else than what he had seen or heard, falls headlong into hell after death, and also loses heaven." **Vasiṣhtha** [4] also : "If thereafter, he speaks falsehood, he goes, when dead, to hell with impurity all around to eat; and thereafter he goes into the lower species". The meaning is, that he goes to a hell which is full of impurity to eat.

1 Ch. I.214–215. 2 Ch. VIII. 82; 84–86. 3 Ch. VIII. 75. 4 Dh. S. App. 4.

Kâtyâyana also: "With his neck tightened round in the death noose, intensely suffering from the hammering of the mace, the servants of Yama, being enraged, carry him to a place full of thorns. Being tormented by the strokes of the multitude of sword blades, and the close embrace of the silk cotton tree, he goes to the terrible river overflowing with pus and blood." 'With his neck tightened in the death noose' *i.e.* with his neck tied round by black iron chains.

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Nârada [1] also: "And in the hells the fierce attendants of Yama, endowed with great strength, will cut off thy tongue and strike constantly thee with swords (217); and having thrust you upon a pike while you are hopelessly wailing, they will lift you up and fling you head downwards into the lake of fire (218). Oppressed by the torture of the iron mechanisms and the like, and by hunger and thirst likewise, he is thrown out into a terrible hell causing intense suffering".

Uśanâ also: "With the mouths dripping on account of an iron vulture being thrust into their mouths and eyes, they fall in the densely dark hell bewildered by their sins". **Pitâmaha** also: "Rendered unconscious on account of the cutting off of the tongue by the red hot prong at the end of the staff, the attendants compel him to fall into the most terrible hell".

Vyâsa also: "Witnesses who give false evidence are fastened by the chains of Varuṇa, and stay for sixty thousand years in hell continuously; of these, upon the completion of a hundred years, one chain is released; and in course of time, after he is freed from the fetter, (he) is born in the lower species".

Nârada also: "For one *Kalpa* [2] would a false witness stay in the *Avîchi* hell, as also those who deprive others of their wealth, and the kings who are irreligious, after having experienced for a long time the hell pangs under intense sufferings, go in this world into the lower species such as vulture, crow, and the like".

Vasiṣṭha [3] also: "For ten years, a hog; a hundred years, a donkey; and a dog for twelve years, and a vulture for twenty years; in the species of worms, insects, gnats, for twenty years; while a deer, for ten years; and thereafter he is born a human being. Of the human form which he gets, such a one becomes mute, and blind also; while poverty will be his for births and births again and again".

1 Ch. I. 217.

2 कल्प—A day of Brahmâ or 1000 *yugas*, being a period of 432 million years of mortals and measuring the duration of the world. (Apte)

3 App. Verses 5–7.

Vyâsa also : "Afterwards is he born a human being entirely abandoned by his kindred, lame, blind, deaf-mute, a leper, naked, and oppressed by thirst; (always) hungry, he begs at the house of his enemy along with his wife ; having realised the evil effects of a falsehood, and appreciated the virtues of truth, it is always beneficial in this and in the next world; therefore one should speak the truth (when giving evidence) as a witness."

The warning should be given in this manner and this only, and not with those compiled by other men ; since says **Nârada**[1] : "By ancient sacred texts, extolling the excellence of truth, and denouncing the sinfulness of falsehood, he shall even inspire them with fear". The meaning is, that the witnesses should be inspired by texts of the Ṛshis, containing comments in the form of statements of facts accompanied by a praise of these, and by means of texts prohibiting false statements, closely connected with the unavoidable results of sin, and make it even terrible-looking (for them).

Thus in the **Smṛtichandrikâ the Law regarding Charging the Witnesses.**

Now the **Law** as to **Putting the Questions to witness : Sâkṣhyapraśnavidhiḥ.**

There **Manu**[2] : "In the presence of the Gods and the Brâhmaṇas, either facing the North or with their faces towards the East, in the forenoon, being purified, one should ask the pure twice-born to give true evidence."

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The word 'twice-born' is indicative, by implication, of persons appearing as witnesses, as will appear from the adjectives used. Hence also **Nârada** :[3] "After having summoned the witnesses of tried integrity and conversant with the circumstances of the case, and having bound them firmly by an oath, he should examine them each separately." The meaning is that by means of terror-inspiring oaths, having brought them over to be bound to truthfulness, should examine each.

These oaths also have been pointed out **by him**[4] : "He should ask a Vipra to swear by the truth, a Kṣhatriya by his conveyance and weapons, a Vaiśya by the cow, grains, and gold, and a Śûdra by all sorts of these sins." The meaning is that by pointing out (the possibility of) the destruction of truth and the like desired objects, the Vipra and the like, and by pointing out the evil effects hereafter to be stated, the Śûdras.

1 I Ch. 200. 2 Ch. VIII. 87. 3 Ch. I. 198. 4 Ch. I. 199

5 प्रश्न—lit. question "affirmation" expresses the full connotation of the word प्रश्न in its present back ground. "Examination after affirmation".

In regard to the affirmation, however, a special rule has been stated by **Manu** [1]: 'Speak', thus he should ask a Brâḥmaṇa; 'speak the truth', a Kṣhatriya.'' In this manner, moreover, the question should be understood to indicate that 'if you speak falsely, your (merit arising from) truth will perish.' In the case of the question to a Vaiśya, however, there being no particular (form) stated in the Smṛtis, he should be warned and restrained by an oath thus: 'If you speak falsely you will be deprived of your kine, grain, and gold'.

In regard to the Śûdra, however, the method of affirmation has been set out at details by **Manu** [2] thus: "Whatever places are assigned by the sages to the slayer of a Brâḥmaṇa, to the murderer of women and children, to him who betrays a friend, and to an ungrateful man, those shall be thy portion if thou speakest falsely (89). The reward of all meritorious deeds which thou, O good man, hast done since thy birth, shall become the share of the dogs, if in thy speech thou departest from the truth (90). If thou thinkest, O friend of virtue, with respect to thyself, 'I am alone', know that the Sage who witnesses all virtuous acts ever resides in the heart (91). If thou art not at variance with that divine Yama, the son of Vivasvat, who dwells in thy heart, thou needest neither visit the Ganges, nor (the land of) the Kurus (92). Naked and shorn, tormented with hunger and thirst, and deprived of sight, shall the man who gives false evidence go with a potsherd to beg food at the door of his enemy (93). Headlong, in utter darkness, shall the sinful man tumble into hell, who being interrogated in a judicial inquiry, answers when quesioned, falsely (94). That man who in a Court of justice, gives an untrue account of a transaction, or asserts a fact of which he was not an eye-witness, resembles a blind man who swallows fish with the bones (95). Learn now, O friend, from an enumeration in due order, how many relatives he destroys who gives false evidence in several particular cases (97). He kills five by a false testimony regarding small cattle; he kills ten by false testimony regarding kine; he kills hundred by false evidence concerning horses, and thousand by false evidence concerning men (98). By speaking falsely in a cause regarding gold, he kills the born and the unborn; by a false evidence concerning land, he kills everything. Beware, therefore, of false evidence concerning land (99). They declare false evidence concerning water, concerning sexual enjoyment with women; and concerning all gems produced in water, or

1 Ch. VIII. 88. 2 Ch. VIII. 89–95 and 97–101.

consisting of stones to be equally wicked as a liar concerning land (100). Marking well all the evils which are the results of false testimony, declare thou openly everything as thou hast heard or seen" (101). 'Kuru,' *i. e.* the land called Kuru. 'Openly', *i. e.* with a pure heart.

Here, some hold that the three verses beginning with 'Naked and shorn etc.' should be taken out and included in the rules regarding the charging of a witness, and that otherwise there would be a difficulty in arranging the connection; in that case it should be understood that after the expression 'Thou needest not visit the Kurus' &c., the verse commencing with 'How may relatives etc'. should be recited.

This rule regarding the affirmation of a Śûdra should also be used in regard to the twice-born who carry on a lower mode of life (even) in times of non-distress, as it is not possible to restrain them by light affirmation. Therefore also says **Manu** [1]: "Brâḥmaṇas who tend cattle, who trade, who are mechanics, actors, or singers, menial servants, or usurers, one should treat these like Śûdras. Those who have fallen off from their proper duties, who subsist upon the food of others, and still aspire to have the status of the twice-born, one should treat them also as Śûdras." By saying 'aspire to have the status of the twice-born' the author points out that the mode of affirmation should be not like that of the twice-born, as e. g. in the case of Ambaṣṭhas etc., but like that of a Śûdra.

Thus **ends** the law as to the **Affirmation of witnesses.**

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Now the law as to the **Recording of witness evidence—Sânkhyawâdavidhiḥ.**

There **Kâtyâyana**: "Witnesses should give their evidence while inside the Court premises, and not anywhere else. This rule is applicable to all witness evidence otherwise than in regard to immovable property". 'Otherwise', i. e. than at the immovable property; for, to that effect says the **Same author**: "Depositions should be taken down near the subject matter in dispute, and in some cases even in places other than these two; this is the rule in regard to disputes about quadrupeds, and also immovables also." 'Of these two,' i. e., at the aforesaid two places; the meaning is that 'even without these two places'; 'on occasions', i. e. in disputes about murder may be given.

1 Ch. VIII. 102.

To that effect, the **Same author**: "If it be a trial regarding the destruction of living beings, witness evidence may be taken near the dead body; but in its absence, of any mark; but when it is otherwise, the witness should not be made to depose at all". 'Of the mark', such as of a horn &c.

Vasiṣṭha states the mode of recording witness evidence: "Sitting on the ground with his face turned towards the East, and duly affirmed by oaths appropriate to him, touching gold, cow dung, and the *darbha* grass, one should speak the truth." **Bṛhaspati** [1] also: "After keeping off the shoes and the upper garment, he should raise up his right hand, and after having taken up gold, cow-dung, and the *darbha* grass, he should speak the truth." 'Raise the right hand', i. e. the meaning is, that he should place his covering cloth in a position like the sacred thread, to the right direction.

'He should speak the truth', to this **Manu** [2] states an exception on some occasions: "Whenever the death of a Śûdra, of a Vaiśya, of a Kṣhatriya, or of a Brâḥmaṇa, would be caused by a statement (of the truth), a falsehood may be deposed to; for indeed that is preferable to death." **Bṛhaspati** also: "Where a Brâḥmaṇa has been guilty of a first offence, or has been oppressed by adversity, or is about to be killed by warriors or the like, one may give him protection even by speaking a falsehood." Here, by the use of the word "api" 'even', it appears that it is intended to indicate that by speaking untruth, some sin is incurred. Hence also **Yâjñavalkya** [3] states a penance: "Where one of the four orders are likely to suffer capital punishment, there the witness may speak an untruth; for purification from that sin, a special oblation of rice known as the *Sârasvata* should be presented by the twice-born." **Manu** [4] also: "Such witnesses must offer Sârasvata oblations of boiled rice which are sacred to the Goddess of speech, performing the best penance in order to expiate for the guilt of falsehood. Or such witness may offer in accordance with the rules, clarified butter in fire reciting the Kûṣhmâṇḍi Ṛks, or a Ṛk sacred to Varuṇa. viz. *Udityam* &c. or with three Ṛks addressed to the water deity". **Viṣhṇu** [5] also: "For the purification, of that, the twice-born should offer oblations into the fire with the Kûṣhmâṇḍi Ṛks. A Śûdra, morever, should offer a mouthful for a day to ten cows."

1 Ch. VII. 23. 2 Ch. VIII. 104. 3 Book II. 83.
4 Ch. VIII. 105–106. 5 Ch. VII. 16, 17.

As for what has been stated by **Gautama** [1], viz. : "No sin is incurred by giving false evidence in case his life depends thereon"; as also what has been stated by **Vyâsa** [2] : "What is said in jest, does no harm ; or to women always, or at the time of a marriage, or when life is in danger, or when the entire property is being robbed ; falsehoods on these five occasions are sinless." ; of these two texts the meaning is this : The aggravated character of offences stated in the texts commencing with particularly in regard to 'the witness etc'., that does not apply here ; otherwise it does apply.

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To that effect is **Gautama** [3] : "Witnesses shall not speak otherwise than when together, nor when they are not asked ; and if when asked they do not depose, they will be guilty of a crime." By the use of the word, 'and', *Cha*, it appears that an addition is implied, viz. 'if they speak falsely', as has been stated by the commentator. The prohibition as regards speaking outside the company has application only where witnesses are cited collectively, and not always. Since says **Vasishtha** [4] : "What has been seen by persons collectively, should certainly be deposed to in the same manner. Where an affair has been transacted separately, that may be deposed to separately by each. Also, where a matter has been known by the witnesses at different periods, in such a case each one should be separately examined ; the law has thus been proclaimed."

Here ends the **Rule** as regards the **Testimony of witnesses.**

Now some **texts** regarding the **deposition of the witnesses.**

There **Kâtyâyana** : "Whatever has been stated naturally by the witnesses, should be accepted as made, free from any blemish ; when once witnesses have deposed, they should not be questioned again and again by the King." **Manu** [5] : "What witnesses declare quite naturally, that must be received at trials. Since what they speak differently is worthless for the ends of justice."

1 Dh. S. Ch. XIII. 24.

2 Mahâbhârata, Śânti Parva (XIII). Ch. 163. 30. Karna Parva Ch. 72. 34. Âdi Parva Ch. 76, 24.

3 Ch. XIII. 5-6.

4 Appendix 5-6.

5 Ch. VIII. 78.

Nârada[1] also explains the meaning of 'worthless': "Where in regard to causes which have been indicated, witnesses have arrived for giving testimony, and a witness does not make a consistent statement with reference to the question under notice, his testimony is as good as ungiven." 'Upon having arrived for giving testimony' *i. e.*, at the time of giving testimony; 'a consistent statement' *i. e.*, in accordance with the statement; in short, what he was asked. By this it has come to be stated that a statement which supports anything unasked is useless. To that effect the **Same Author**[2] says: "Where witnesses depose as to a sum which is too low or too high, that also should be known to be no evidence; this is the rule as to witnesses." 'Where' *i. e.* in regard to disputes of almost permanent[3] character such as relating to debts etc. To that effect is **Kâtyâyana**: "In disputes about recovery of debts and the like, which are of a permanent character, if witnesses depose to more, or less, than the amount declared, the claim does not become established."

If the testimony of witnesses which is invoked as a means of establishing the matter under affirmation be less or more, then it is certainly liable to create suspicion; the meaning is, that it will not be accepted as proof (even) for a portion of the point affirmed. From this text itself it should be understood that if the depositions of witnesses who are called in support of a portion of the matter under affirmation fall below or exceed the point, they would be equally regarded as non-evidence; as it has been generally stated that the point at issue does not become established.

In regard, however, to matters which are of an impermanent character, the point at issue certainly becomes established; so says the **Same Author**: "Even when witnesses depose to a portion only of the matter to be established in charges of adultery, heinous offence, theft, the whole of the matter that is alleged may be held to be proved." As for what has been observed by the **Same Author**: "Where, however, the testimony of witnesses happens to be less or more, in such a case it should be omitted; there the witness shall not be punished; but if a witness does not depose, he incurs a penalty", that has a reference to matters of a permanent character.

Thus if the depositions of witnesses are inconsistent in regard to a portion set out in the dispute, then that also is useless; so says the **Same Author**: "Where the testimony of a witness is inconsistent with the region, the period, the amount, its quantity, form, kind, and the age, such depositions, the learned regard as not given."

1 Ch. I. 232. 2 Ch. I. 234.

3 स्थिरप्रायविवादेषु Compare "Long Causes" of the modern nomenclature.

Nârada [1] also : "If the witness evidence differs mutually as to place, time, age, matter, quantity, share, and species, such testimony is worthless likewise."

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Thus it should be construed, that in matters of a permanent character, such as the recovery of debts etc., the witness testimony which is neither less nor more, and is in support of the point at issue, is good evidence, and not any other. Hence also **Vyâsa** : "If what is deposed to is not proportionately less as regards time, form, age, amount, and the specie, then the point at issue may be regarded as established." **Bṛhaspati** [2] also : "Where the point under affirmation has been entirely corroborated by witnesses, that party shall be declared to be successful ; but if otherwise, the point at issue would not be regarded as concluded." 'Corroborated' *i. e.* as correct.

To that effect also **Yâjñavalkya** [3] : "The party whose witnesses depose to the truth and (the allegations in) the plaint, shall become successful ; (and) the one whose witnesses speak falsehood, sure will be his defeat." The meaning is that the disputant, *i. e.*, either the plaintiff or the defendent, all of whose witnesses depose truly in support of the matter affirmed by him.

The one, however, some of whose witnesses depose truly, and the others falsely, for such a one states **Manu** [4] : "On a conflict among the witnesses, the King shall accept (as good) the evidence of the majority ; if the witnesses are equal in number, that of those who are distinguished by good qualities ; in case of a difference as to qualities, the best among the twice-born." **Nârada** [5] also : "Where there is a conflict among the witnesses, the statements of the majority are decisive ; when the number is equal, those who are pure should be accepted ; and if the number of these be equal, the evidence of those who have stronger memory. Where, however, an equal number of witnesses possessed of a good memory is found on both sides to a dispute, in such a case on account of the settled nature of the law of evidence, the entire testimony should be turned down." The use of the word 'pure' is indicative, by implication, of those who are possessed of the qualities of a householder's order, and the like. Hence also **Yâjñavalkya** [6] : "In the case of a

1 Ch. I 233. 2 Ch. VII. 32. 3 Book II. 79.
4 Ch. VIII. 73. 5 Ch. I. 229–230. 6 Book II. 78.

disagreement, the testimony of the majority prevails ; similarly, if the witnesses are equally divided, the evidence of the virtuous; if, however, the virtuous disagree, the evidence of those who are most virtuous should be accepted." In this connection **Bṛhaspati** : "When there is a doubt as regards a document or the testimony of witnesses, and an inference is also of a doubtful conclusion, in such a case, the ordeal is the determinant."

Thus in the **Smṛtichandrikâ texts** on the **testimony of witnesses.**

Now some **Other texts relating to witnesses.**

There **Yâjñavalkya** [1] : "One who does not (offer to) give evidence as a witness though positively knowing (the facts of the case), that basest of human beings is equal to a false witness in point of sins and (liability to) punishment." The meaning is, that the man who though having knowledge in fact of the point in dispute, (yet) through wickedness, does not agree to give evidence, such a one is to be regarded as sinful, equally with a false witness and punishable too. **Nârada** [2] also : "After having previously communicated to others, one who refuses to give evidence, such a one deserves to be heavily punished; for indeed, he is more criminal than a false witness even." The meaning is that, one who when first having agreed to be a witness, afterwards when cited, says at the time fixed for the appearance of the witnesses, that he would not be a witness, such a one should be heavily punished. **Bṛhaspati** [3] also : "If a witness who, when summoned, not being ill does not make his appearance, such a one should be made to pay the debt and a fine, after the lapse of three fortnights." **Vasiṣhṭha** also : "A person who was never cited as a witness, nor summoned, nor asked, or one who declares a fact to be untrue, such basest of mankind should be punished." **Kâtyâyana** also : "If deposing everything even when not asked, or not replying to what they are asked, the witnesses should be placed under arrest, censured, and punished according to law. In the case of abuse, and in the

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case of deceit, they should be made to pay three hundred as the penalty ; in disputes regarding debts etc. they should be punished with the amount, as well as be made to pay the debt." 'Amount' *i. e.* the amount of the penalty. By the use of the pronoun 'these,' are contemplated only those who do not give a reply to a question, as these are immediately in the context. Hence also the **Same Author** says : "If a person, who has witnessed a transaction,

1 Book II. 77. 2 Ch. I. 197. 3 Ch. VII. 31.

does not give evidence as a witness, he shall bear an equal amount of penalty and (also) the amount of the debt; in disputes other than these he deserves the penalty of three hundred."

'Other than these' *i. e.* other than those relating to debts etc. To that effect **Manu**[1]: "If a man who, without being ill, does not give evidence in cases of loans and the like within three fortnights, he shall become responsible for the entire debt, and pay a tenth part of the whole (as a fine)." 'Without being ill' *i. e.* is well; 'that debt' *i. e.* the subject matter of the dispute which was to be proved by the witness. 'The whole of it' *i. e.* together with interest. 'Shall pay' *i. e.* will be compelled to pay. Moreover **Yâjñavalkya**[2] also: "A person, however, not giving evidence should be made to pay before the King the entire debt with the addition of a tenth part as a charge thereto, on the forty-sixth day." By the expression 'addition of tenth' is expressed a $\frac{1}{10}$th portion. Such an amount, moreover, should be recovered by the King as a penalty; it has been so explained by the commentators.

Here the import of the former text being that nothing should be paid by the debtor, and that that amount itself which is to be paid, a witness not giving evidence should be compelled to pay, if follows as of course that the amount paid by a witness himself not giving evidence should not be recovered from the debtor, as it had to be paid by him owing to his own fault. From the expression 'on the 46th day,' it appears that if he speaks before that period, he should not be compelled to pay.

Hence also **Kâtyâyana**: "When witnesses are not properly in possession of facts, time should be given to them; where the witness evidence is ambiguous, they should be asked immediately to speak plainly." Thus, therefore, what has been stated by the **Same writer** viz.: "No time should be allowed by the king to be lost in making the witnesses depose. A serious defect might arise on account of time in the form of miscarriage of justice," that should be understood to have a reference to a witness whose testimony is clear, as the rule as to giving of time is in regard to ambiguous evidence.

A witness, moreover, who after being asked, sworn in, and after the question was put to him at the time of the trial, being infatuated, or blinded by the influence of passion or hatred, denies to give his own evidence by saying that he would not be a witness, for such a one, **Yâjñavalkya**[3] states

1 Ch. VIII. 107. 2 Book II. 76. 3 Book II. 82.

a penalty : "He who having been called upon, sworn in to give evidence, conceals it from others under the influence of passion, such a one should be made to pay an eight-fold fine; a Brâḥmaṇa, however, should be banished." The context here is (of that) in the dispute. Therefore the sense to be inferred is that eight times the amount which would be the penalty upon a defeat in the dispute should be compelled to be paid by him. The meaning of the expression 'should be banished' is that, depriving [1] him of everything, pulling down his house, or externing him from his own nation. Here, however, by its association with the enhanced penalty, the meaning to be inferred is in the form of a banishment from his own country.

Kâtyâyana, however, says that witnesses who having once given evidence, again give false evidence, should be punished : "Witnesses who having first given evidence depose afterwards contrary to that, should be fined, since they are guilty of giving false evidence." **Gautama** [2], however, says that a witness giving false evidence for the first time even, should be censured and punished also : "A witness must be reprimanded and punished for speaking an untruth." **Yâjñavalkya** [3], however, states a special penalty for these kinds of witnesses : "Separately each should be punished, the suborner as well as the false witnesses, with a fine double the amount in dispute. A Brâḥmaṇa, it has been laid down, should be banished." Those who prepare false evidence are suborners *i. e.* in short who give false evidence. These should each be separately punished by the King. The meaning is that they should be made to pay twice the amount which is incurred upon a defeat in the dispute.

Although it is generally stated that a Brâḥmaṇa should be banished, still where double the amount of penalty is given in the case of Kṣhatriyas in small amounts, there the punishment for the Brâḥmaṇa would be in the form of the banishment depriving him of everything. Where, however the punishment to the Kṣhatriyas is not in small amounts, there the punishment for the Brâḥmaṇa would be in the form of his house being demolished ; where again the amount in the case of Kṣhatriyas is too large, there it should be understood that the punishment for the Brâḥmaṇa would be in the form of his being exiled from his country. Because the rule is that the imposition of penalty depends relatively upon the comparative magnitude of the offence.

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Therefore also a variety of punishments has been laid down by **Manu** [4] by a discriminating regard for the offences involving an element

1 नष्टीकरण. 2 Ch. XIII. 23. 3 Book II. 81. 4 Ch. VIII. 118–122.

of untruth : "Evidence which has been given from covetousness, infatuity, fear, friendship, lust, anger, and likewise from ignorance, or childishness, is declared to be invalid. Of these any one who gives false evidence out of any of these emotions, for such a one, I will declare punishments in due order. If out of covetousness, they shall be fined one thouand ; if out of infatuation, in the lowest amercement ; while if through fear, the four middling amercements shall be paid as fine, and if through friendship, five times the amount of the first *i. e.* the lowest amercement. If through lust, ten times the lowest (amercement); if through anger, three times the next (*i. e.* the middle); if through ignorance, full two hundred; if through childishness one hundred. These the wise men have declared to be the punishments for giving false evidence." 'Covetousness' *i. e.* solely devoted to money; 'infatuation' *i. e.* want of proper appreciation of the sense of the question; 'fear' *i. e.* apprehension of an evil likely to accrue; 'friendship' *i. e.* excessive attachment; 'lust' *i. e.* desire for amorous enjoyment; 'anger' *i. e.* intolerance; 'ignorance' *i. e.* a wrong conception even at the very time of the actual sight or hearing ; 'childishness' *i. e.* non-acquisition of steadiness of intellect.

Here in the case of false evidence given through covetousness, fear, friendship, the highest amercement has been declared by a variation in language, by regard to parity of offence; while a falsehood deliberately made involves greater criminal liability, and therefore one and a half times of the highest amercement has been stated; while when on account of anger, the criminal responsibility being still higher, three times the highest amercement has been stated. In the case of infatuation, however, the criminality being smaller, the lowest amercement has been declared; while in the case of ignorance the criminal liability being still less, a couple of hundred *kârṣhâpaṇas* have been stated. In the case of childishness, morever, it should be borne in mind that the criminality being still less than the lowest, half of it has been stated. Moreover, this rule of variation in punishments should be understood to be applicable even in the case of a Brâhmaṇa perjurer, as the rule as stated in the Smṛti [1]: 'These are declared to be in the case of false evidence' has been stated without any particularisation.

"Members of the three *varnas*, however, who give false evidence, a just king should entirely banish after inflicting punishment; while a Brâhmaṇa

1 Of Manu Ch. VIII. 124.

he should simply banish." In this text, for false evidence by a Brâḥmaṇa a special rule having been laid down, what is the particular point (intended to be) stated here? It will not be proper to say that in the case of Kṣhatriyas and others, banishment after inflicting punishment, while in the case of a Brâḥmaṇa banishment only. Because the punishment of banishment having been laid down by **Yâjñavalkya** for a Brâḥmaṇa even for one act of false evidence, there is no occasion for an enhanced punishment upon a repetition. Therefore, what has been said by some namely that the word '*tu*' 'however', is intended to exclude a monetary penalty in the case of a Brâḥmaṇa, stands refuted.

It may be asked, how then (can it be stated that) that a special punishment has been stated in the case of a Brâḥmaṇa? The answer is, here by the expression 'entire banishment,' are expressed the punishments of cutting off of the tooth gums, cutting off the tongue, and death also; while by the word 'banishment,' the 'deprivation of entire property' and the like. Therefore, a particular rule has come to be stated in the context of the expression 'having inflicted a punishment,' while the distinction between absolute banishment and simple banishment and the like, as also the cutting off of the tooth gums, the deprivation of the entire property, and the like, should be contexted by regard to the subject matter of the perjury, and also by regard to the repetition of the offence. In the case of a perjury committed without any special motive, and committed also for the first time, the punishment should be as laid down by **Yâjñavalkya**; in other cases that laid down by **Manu**. It should be so construed.

As to what has been stated by **Viṣhṇu**, viz., "persons giving false evidence should be deprived of their entire property," that has been interpreted by some as having a reference to a falsehood regarding land or referring to low castes such as the Sûdra and the like.

The use of the expression 'a false witness,' is intended as indicative of such a one even. Hence also **Kâtyâyana**: "The party by whom false witnesses have been set up out of covetousness for (the fruit of) the litigation, the king should confiscate all the property of such a one and should banish him from the place." 'Banish from the place' *i. e.* completely banish from his own country.

The party, moreover, who has attempted to seduce cited witnesses for a false testimony, such a one is regarded as Heena, so says **Nârada** [1];

1 Ch. I. 165.

"No one should converse in secret with a witness summoned by his adversary, neither should he try to estrange the latter from the cause of his opponent by other means. The party to such a practice as this is regarded as *Heena*."

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The import is that the king should punish with the penalty of a *Heena* litigant, one who conducts himself in such a manner.

In this manner having inflicted a penalty upon a false witness and one citing him, the decision which was reached by reliance upon the evidence of the false witness should be cancelled. To that effect **Manu**[1] also: "In whichever dispute false evidence has been given, one should reverse the decision in all those cases, and whatever may have been done should be undone."

In which cause will it be regarded that false evidence has been given? Anticipating this question, says **Yâjñavalkya**[2]: "Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false." The meaning of this: where many witnesses, some near and others not near, have been cited, there, taking into consideration the difficulty of bringing in the witnesses who are not near, and having decided that the evidence of the witnesses nearby was enough, a decision has been given with (a reliance upon) their evidence, such a disputant is regarded as defeated; and thinking that that defeat was connected with false evidence, the plaintiff again arranges to bring the witnesses who were not near, but who were of better quality than those who are near, or twice the number of witnesses who were near, (but) are declared false.

Kâtyâyana also: "Where, however, a matter in dispute has been established by means of witnesses, and the other party proves that matter to be otherwise by means of a greater number of witnesses, or witnesses of good family, then the first set of witnesses become false." The meaning of this: When the witnesses cited by the plaintiff who have deposed in support of the case of the plaintiff, then if the defendant causes evidence to be given by witnesses who are superior in number or in quality, then the plantiff's witnesses shall be (regarded as) false.

AN OBJECTION: Indeed, how can in one suit be the possibility of witnesses for the plaintiff and the defendant, as there is a prohibition under the **text**[3] "never

1 Ch. VIII. 117.

2 Book II. 80.

3 Cf. Kâtyâyana see Coll. Vol. II. p. 664, line 16.

in one suit shall the burden of proof lie on two litigants". (The answer is) 'yes,' and it is therefore that the **text**: "Where however.....has been established" has been made to have a reference to a re-hearing. Therefore there is no contradiction anywhere.

In regard to a single witness says **Manu** [1]: "In regard to the evidence of a witness, however, the witness to whom within seven days after he has given evidence, happens a (misfortune) through sickness, fear, or the death of relative, such a one shall be made to pay the debt and the fine." The meaning is that the test of the evidence of one witness should be made by the occurrence of difficulties from unseen causes within a week.

This test, moreover, should be made only in the case of witnesses such as a messenger, and the like, and not, moreover, of one possessed of qualities, or of the King, or the Presiding Officer of the Court; for there is an impossibility in such cases of an untruth even in the case of one. Hence also **Vyâsa**: "Under the influence of a jewel, or a charm, or of medication, or when administered without proper attention, even an ordeal may not respond well; but never a witness who is endowed with good qualities." Hence also an exception has been made by **Bṛhaspati** [2] in the case of a messenger and the like witnesses, as also in the case of the King and the chief judge. "A messenger witness, one who bears the time indicator, as also one who has arrived in the middle of the transaction, shall make good evidence even though one; so also the king, and the chief judge likewise." 'One who bears the time indicator' *i. e.* the accountant. Others have been indicated by **Kâtyâyana**. "If a person who was taken in confidence at the time when the deposit was made, as also a messenger witness when sent by a litigant, may be admitted as a good witness even though one."

Thus in the **Smṛtichandrikâ—Texts relating to Witnesses.**

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Now cases of Inference without witness.—**Asâkṣhi-pratyayâḥ.**

There **Nârada** [3]: "However six different kinds of proceedings have been indicated in which witnesses are not required. In the case of these, the only indications (of the crime committed) are substituted for the evidence of witnesses in these cases by the learned." The meaning is that, in the case of disputes, such as for incendiarism or the like, the sign of a burning faggot in the hand performs the function of witnesses.

1 Ch. VIII. 108. 2 Ch. VII. 18. 3 Ch. I. 172.

To that effect says the **Same Author** [1]: "One carrying a burning faggot in his hand may be known to be an incendiary, also one apprehended with a weapon in his hand (may be known) to be a murderer, and in the case of a man (and a woman) apprehended together while seizing one another by the hair, the man may be taken to be an adulterer with the wife of another. One having a hachet in his hand and moving about in the vicinity may be a destroyer of embankments. Likewise one having an axe in his hand is declared a forest-cutter. From the signs which are apparent, a man may be known to have committed an assault. All these are the cases where a conclusion may be drawn without the evidence of witnesses; but in the case of violence a careful investigation is advisable." 'From the signs which are apparent', such as fresh nail marks and the like. 'Conclusion without the (evidence of) witnesses' *i. e.* even without the help of witnesses, by mere signs only doubts may be dispelled. 'In the case of violence', *i. e.* in the case of assault.

For the purpose of discriminating marks artificially caused a careful investigation should be made; for the **Same Author** [2] says: "Some one might make marks upon his person through hatred and cause injury to another. In such cases it is necessary to resort to inductive reasoning, (ascertaining) the motive and the fact of the matter and their inter-relations." 'In such cases' *i. e.* in the case of an assault.

AN OBJECTION

Indeed it may be stated that this **text** [3] is meaningless: "The firmament has the appearance of a flat surface and the fire-fly looks like fire. Yet there is no surface in the sky, nor fire in the fire-fly. Therefore, even though a thing should have happened before one's own eyes, it is proper to investigate the matter. One who does not deliver his opinion till he has investigated the matter, will not swerve from justice". For in the above text the **Same Author** [3] has laid down the rule of investigation in all cases (even) where one has a burning faggot in his hand. The anwer is 'yes', that is so, but even there an investigation is prescribed for laying down the rule about the remedy. Thus there is no fault.

In the same manner a dispute about a theft also may in some cases be regarded as capable of conclusion without evidence of witnesses. To that

1 Ch. I. 173–175. There is an omission of one verse entirely in the print. Here read the following verse between line 7 and 8th line.

प्रत्यग्रचिन्हो विज्ञेयो दण्डपारुष्यकृन्नरः। असाक्षिप्रत्यया ह्येते पारुष्ये तु परीक्षणम् ॥

2 Ch. I. 176. 3 Nârada, Intr. I. 72–73.

effect **Śaṅkha and Likhita**: "From the mutual sport in the form of catchholding in a each other's hair, the offence of adultery with another's wife; one with a burning faggot in his hand, an incendiary; one having a weapon in his hand, a murderer; and one with the stolen property in his hand, a thief (may be known)." 'Stolen property' *i. e.* the mark of a portion of stolen property. Even here an investigation should be made, as **Nârada** [1] has stated: "One who has never committed robbery may be charged as a robber, and an actual robber on the other hand may be acquitted of the charge of robbery; (for) though not a thief Mâṇḍavya was declared to be a thief at law". Therefore the import is that investigation is necessary. Hence also **Bṛhaspati**: "Where in the case of a document, or after examination of witnesses, a doubt is created and an inference is confused, in such a case divine evidence is the purgative". 'Inference' *i. e.* inferential reasoning e. g. from the burning faggot in the hand and the like. As **Vyâsa** has stated that "the wise regard inference as based on motive and logical reasoning".

Thus **ends** the topic of **Inference without witnesses.**

Thus ends the Chapter of Witnesses.

Now the **Consideration about Ordeals-Divya-Nirûpaṇam.**

There **Pitâmaha**: "In whichever dispute, however, where there is no possibility of witnesses (being available), and in (the case of) heinous offences particularly, the judge should cause ordeals to be administered." The use of the word 'witnesses' is by an extended application indicative of human evidence. Hence also **Yâjñavalkya** [2]: "Evidence has been declared to consist of documents, possession, and witnesses; if none of these be available, any one of the ordeals has been declared." The expression, 'if none of these be available', is intended to include, by implication, the absence of argument (*Yukti*) also. Hence also **Nârada** [3]: "If arguments also are of no avail, then one should decide by (a resort to) ordeals

PAGE 96* only; such as, by (the ordeal of) fire, water, meritorious acts and the like, by a regard to the matter in issue, the season, and the capacity (of the persons)."

'By a regard to the matter [4] in issue' i. e. the meaning is that appropriate to the smallness or greatness of the point to be established. To that effect also **Vyâsa**: "Appropriate to the matter in issue have been stated to

1 Intr. I. 42.
2 Book II. 22. 3 Ch. I. 239. 4 अर्थ--Another (Dr. Jolly's) reading is देश.

be the (ordeals of) truth, balance etc.". There, the (ordeals of) truth etc. are in proportion to the smallness of the matter in issue; so says **Bṛhaspati**[1]: "Truth, vehicle, weapons, cow, seed, and gold also, the feet of the Gods, or of the Brâḥmaṇas, as also the heads of the sons and the wife; these, however, have been declared to be the (subject of) oaths easy to be taken in small matters."

'In small matters', this is intended as indicative of establishing a small injury also. Hence also has been generally stated by **Nârada**[2]: "Truth, vehicle, weapons, cow, seed, and gold also, the venerable feet of the gods and ancestors, charitable donations, and meritorious deeds also, (by) these have been declared to be the oaths in small matters". 'In small matters' i. e. in trifling offences. 'And meritorious deeds also', in this expression, by the word 'also', *cha*, other oaths also, well known to the people, are incorporated. Hence also **Śaṅkha and Likhita**: "(By) the charitable endowments known as *Iṣṭa*[3] and *Pûrta* and other (kinds of) oaths also should be caused (to be taken)".

As to what has been stated by **Nârada**: "In a great cause, an ordeal has been stated to be for men engaged in the dispute;" as also what has been stated by **Pitâmaha**: "In (the case of) a serious offence the Lord of the Earth should compel ordeals to be administered"; that has a reference to the balance and similar ordeals; as says **Yâjñavalkya**[4]: "The balance, the fire, the water, the poison, and the Kośa are the ordeals (prescribed) here for exhoneration (from an accusation); these are (to be resorted to) in charges of serious offences; when a plaintiff has (agreed) to abide by the result (of the ordeal)". By the word 'fire', are indicated, a heated iron ball, a heated coin, as also a heated (plough-head), as it has been generally stated.

Therefore, in the case of a heated coin or plough-head, in case of an accusation of a serious offence, the condition should be understood to be 'when the plaintiff has (agreed) to abide by the result.' "*Śîrṣhakam*, 'result' i. e. the penalty attached as a consequence to a defeat in a dispute. It is the head or first position in the trial; as it occupies that position it is (called) *Śîrṣhakastha*, 'placed at the head'. This is what is (intended to be) stated. Not that in all kinds of accusations of serious offences, occur

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1 Ch. X. 6. 2 Ch. I. 248.

3 इष्टापूर्त—See Manu Ch. IV. 226. These are described as under:
वापीकूपतडागादिदेवतायतनानि च। अन्नप्रदानमारामाः पूर्तमित्याः प्रचक्षते॥
एकाग्निकर्महवनं त्रेतायां यच्च हूयते। अंतर्वेद्यां च यद्दानमिष्टं तदभिधीयते॥

4 Book II. 95.

the ordeals of balance or the like; but that in those cases only wher e, with the object of substantiating the solidity of his charge, the prosecutor of his own accord undertakes to pay the penalty either bodily or pecuniarily for a defeated party in cases of serious accusations, by saying "In case this man succeeds, I (agree to) be punished in such a manner." 'Hence also says **Nârada**[1]: "Where no one declares himself ready to undergo punishment, an ordeal cannot take place" i. e. the implication is that when the prosecutor does not 'offer to abide by the result'. So also **Pitâmaha**: "In the case of ordeals, the prosecutor is expected to declare to abide by the result; and (then) to the accused should be administered the ordeal as pointed out in the *S'ruti*". 'Ordeal', *i. e.* any of the five, viz., the balance and the others, as has been particularised by **Yâjñavalkya** in the word 'these'. Hence also **Nârada**: "A King always administering the five ordeals, according to the procedure under the law, to the accused persons, enjoys happiness here and after death from here."

By this it comes to be stated of course that these ordeals are not for the prosecutors. And it has also been stated by **Kâtyâyana**: "No one should appoint a prosecutor for an ordeal; to the accused should be administered an ordeal by those who are adepts in (the matter of) Ordeals." 'No one,' such as the head of the court or the like. 'Adepts in ordeals,' such as the Chief Judge and the like others.

By this it necessarily comes to be stated that this rule has no application where an ordeal has been undertaken by the mutual agreement between the plaintiff and the defendant. And it has also been stated by **Yâjñavalkya**[2]: "Or, by consent, any one may perform (the ordeal) and the other may make a declaration [3] for a liability in case the verdict went against him." By **Nârada** also has been stated: "The prosecutor has always been expected to declare himself ready to abide by the result; by consent, however, the other may do so; the other may take upon himself tha result." 'Always' *i. e.* in regard to the five ordeals which require an undertaking to abide by the result.

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1 Ch. I. 257. 2 Book II. 96.

3 शीर्षिकस्थ or शिरःस्थ—This is the position of the prosecutor in a proceeding, particularly where an ordeal is resorted to, where he has to undertake the primary liability of a defeated litigant in case the result of the proceeding went against him.

शीर्षिक means a judgment, a verdict in a judgment; and शीर्षिकस्थ one who declares himself liable for a verdict.

The undertaking by the accused to abide by the result is with a view to establish the strength of his denial; hence also, an undertaking by one who denies the charge, viz 'If he succeeds, I should be punished in this manner.'

Likewise, in some cases, no one need give an undertaking (to abide by the result), as says the **Same Author** [1]: "When the prosecutor has appeared and declared himself ready to abide by the result in case he was defeated, it is proper to administer an ordeal; otherwise (however) when (it is done) under the King's edict." 'Under the King's edict,' for under the King's command, however, the (ordeals of) balance etc., may occur even without any declaration of liability. To that effect, **The Same Author** [2]: "The King may inflict ordeals on his own servants, even without any declaration of readiness to suffer a penalty." **Yâjñavalkya** [3], however, in cases of particular offences, states an exception even to the rule about the declaration of readiness to suffer penalty: "Even without a declaration of readiness to abide by the result and suffer penalty, (an ordeal may be permitted) in the case of treason against the king, and also of a sin (of an aggravated character)". 'Declaration' *i. e.* 'to abide by the result of the trial.' To that effect **Vishṇu** [4]: "In cases of high treason, and heinous offences, even without the declaration of readiness to suffer penalty" *i. e.* the implication is that the balance and like others may be administered. To that effect also **Kâtyâyana**: "For those who have been suspected by the Kings, the (ordeals of) balance and the like may be administered, for the purpose of the purification of self; in such a case one should not require a declaration of readiness to suffer the penalty." In the case of those who have been suspected as guilty by reason of scandalous reports among the people, as also those who have been suspected along with robbers, the (ordeals of) balance and the like others should be administered; in such cases there is no (necessity for a) declaration etc. so indeed is (the opinion of) **Bhṛgu**". The meaning is that those who are suspected of association with robbers.

As for what has been stated by the **Same Author**: "In trials based on suspicion, never should on any account a declaration (as to readiness to suffer the penalty) be required in (an ordeal of) Kośa," that is intended as a rule that in trials based on suspicion, the Kośa is administered in regard to debts even, without a declaration of readiness for a penalty; since the expression used is 'never on any account.'

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1 Ch. I. 269, As Asahâya puts it, अन्यत्र नृपहिंसनात्। यदा पुनः नृपगृहे काचिद्धिंसा कृता भवति तदा शिरोपस्थानं विनापि दिव्यं दातव्यम्। Dr. Jolly's edition reads नृपशासनात् instead of नृपहिंसनात्.

2 Ch. I. 270. 3 Book II. 96. 4 Dh. S. Ch. IX. 2.

In charges based on suspicion, moreover, Kośa has been mentioned by **Vyâsa**: "Balance, fire, poison, and water are the four varieties of proof; this division is in the case of divine (proof); Kośa is the fifth in cases based on suspicion."

The expression 'In case of suspicion,' is intended as an exhibition of confidence etc. Hence also **Kâtyâyana**: "In cases of securing confidence when there is suspicion, at a partition among persons entitled to a heritage at all times, and when an undertaking is contemplated under a combined action should offer the (ordeal of) Kośa alone." **Pitâmaha** also: "In cases of confidence, in all cases of suspicion, as also in a case of joint undertaking, in these cases the Kośa should be offered always for the purification of the mind." 'Kośa' *i. e.* 'without the declaration,' is the implication. So also the **Same Author**: "One should entirely avoid the ordeals which are without (an accompaniment of) the declaration of liability, viz. those commencing with the balance and ending with the poison; Kośa is the only one stated to be without a declaration" *i. e.* the implication is that in accusations founded on suspicion.

In a trial founded on fact and in regard to a serious accusation, the Kośa also being devoid of the declaration of liability as to the result, is certainly to be avoided, as in the **text**: "When the prosecutor has (agreed) to abide by the result (of the ordeal)," **Yâjñavalkya** has stated the rule as applicable to the five ordeals by implication. In regard to trials founded on fact, and about serious charges also in a court other than that of the king or the Chief Judge, however, in the five ordeals of balance and the rest, there is no declaration by the prosecutor as to the result; because in the **text**: "An oral reproof, as also a reproof with the expression 'fie,'[2] are both confined to a Brâhmaṇa, and a monetary and corporal punishment, both these are confined to the king," the penalty as the consequence of the prosecutor's preliminary undertaking for the final verdict has been stated to be in regard only to the King's or the Chief Judge's Court. From this, therefore, the **text**: "One should exclude entirely the ordeals (in trials) where there is no primary declaration by the prosecutor about the acceptance of responsibility for the final verdict," and any other like text should be understood only to be having a reference to the King's or the Chief Judge's Court.

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1 महापराधे. 2 धिक्.

In this manner, moreover, what has been stated by Pitâmaha in refutation of the **text** "in an answer of denial the (burden of) proof is on the plaintiff" viz. "for one who has been charged, an ordeal should be administered as has been pointed out in the *Śruti*", that also should be understood to be in reference to the King's and the Chief Judge's Court only, and not in courts other than these. Hence also, it is proper to understand that the statement that the administration of the ordeals by the members of the Court should be without transgressing the **rule.** "In an answer of denial the (burden of) proof shall be on the plaintiff" would be in (the case of) a document or the like.

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Nor, moreover, a doubt should be raised that under the text of **Pitâmaha** viz. "One should not administer these (The rice and also the Kośa) in (the case of) charges (founded) on suspicion, that by reason of its being (stated) along with the rice, the Kośa should be administered in charges founded on suspicion only, as there would be contradiction to the aforestated text of **Yâjñavalkya** viz. "When the plaintiff has (agreed) to abide by the result (of the ordeal)". Its statement along with the rice, however, is intended to indicate that in petty charges also the Kośa may be given. Hence also **Nârada** : "The Kośa, one may administer in small (charges) even." Therefore it should be construed that the rule stated by **Yâjñavalka** viz.: "These are (to be resorted to) in trials for serious accusations" is applicable only to the ordeals commencing with the balance and ending with poison. If the rule were applicable to Kośa also there would be contradiction with the aforestated text of **Nârada.** Hence also the **Saṅgrahakâra** : "(Ordeals) commencing with the balance and ending with poison, one should administer in important cases".

As for what has been stated by **him** : "The three, moreover, commencing with Kośa, in petty cases in their order", that is intended for stating that the rule as to a petty cause is in regard to the offence of deprivation only, and not in the case of a denial also; for, the ordeals of Kośa, rice, and heated coin, having been stated in reference to the denial of a serious charge, *i. e.* the restrictive rule as to (its applicability) to small matters would be impossible. In small matters also, in regard to charges founded on suspicion alone, (should be) the rice; vide, the text of **Pitâmaha** : "The rice, and the Kośa also, one should administer in the case of charges founded on suspicion". The heated coin also in small matters only if founded on suspicion; as it has been stated by the **Same Author** : "For

charges founded on suspicion of theft in a small matter, one should direct the heated coin".

The ploughshare also may on occasions be administered in a small matter; to that effect also **Bṛhaspati**: "For a cow-thief, (the ordeal of) the ploughshare should be administered by the members of the Court with effort". Thus it should be understood that the **rule** viz: "These are (to be resorted to) in trials on serious accusations, when the prosecutor has (agreed) to abide by the result (of the ordeal)", has a reference to the ordeal of the iron ball, to be hereafter described, and has no reference to (the ordeals of) the heated coin, the ploughshare, and the fire.

Hence also a separate mention of the ordeals by fire has been made by **Bṛhaspati**: "The balance, the fire, and the water, also the poison, the Kośa also the fifth, the sixth has been stated to be the rice, the seventh the heated coin, the eighth is called the ploughshare, the ninth shall be the fruit of religious merit, all these ordeals have been pointed out by the Self-born." The ordeal of religious merit, however, having been excluded from serious charges, should be understood to be (applicable) in small matters only.

As for what has been stated by **Pitâmaha**: "Those men who have been (guilty of) killing and are begging for an expiation, and those who have been accused in doubtful cases, should be tried by the ordeals of Dharma and Adharma", its meaning is this: For those who have been accused in petty charges in regard to killing, money, and the sins, the ordeal is the one by religious merit.

Thus in the **Smṛtichandrikâ** the **Consideration of Ordeals.**

Now **certain texts** are being written which will be useful for a knowledge of petty and serious charges. There **Manu**[2]: "For the purpose of business transactions among people those technical names (of certain qualities) of copper, silver, and gold which are generally used on this earth, I shall fully declare." The meaning is that with the object of removing any misapprehension about the meaning of the rules of the laws of punishment and ordeals, the technical names of substances like copper etc. as linked with the measures are being expounded. **The author** expounds the point enunciated[3]: "The very small mole which is seen when the sun shines through a lattice, they declare (to be) the least of (all) quantities and (to be called) a *trasareṇu* (a floating particle of dust) (132); know (that) eight *trasareṇus*

1 Book II. 95 (4). 2 Ch. VIII. 131. 3 Ch. VIII. 132.

(are equal) in bulk (to) a *likṣhâ* (the egg of a louse); three of these to one grain of black mustard (*râjasarṣhapa*), and three of these to a white mustard (*gaurasarṣhapa*) (133); six grains of white mustard are one middle-sized barley-corn (*yava-madhyaka*), and three barley-corns however, (make) one *kṛshṇala*; five *kṛshṇalas* are one *mâṣha*; and sixteen of these, one *Suvarṇa* (134). Four *Suvarṇas* are one *pala*, and ten *palas* one *dharaṇa*; two *kṛshṇlas* (of silver) weighed together, must be considered a one *mâṣhaka* of silver (135). Sixteen of these make a silver *dharaṇa* or *purâṇa*; but know that (to be) a *karṣha* of copper is a *kârṣhâpaṇa* or *paṇa* (136). Know that ten *dharaṇas* of silver make one *S'atamâna*, four *suvarṇas* must be considered (equal) in weight to a *niṣhka* (137)[1].

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The net meaning of these verses is described in inverse order. The words *niṣhka* and *S'atamâna* are in regard to one silver *pala*. Hence also in connection with the technical names of silver (coins) **Yâjnavalkya**[2] has said: "By ten *Dharaṇas* make a *S'atamâna*, but one *pala* only; a *niṣhka is* (equa to) four *suvarṇas*." The words *pala*, *Kârṣhâpaṇa* are the nomenclatures of the copper coin *karṣha* which is (equal to) the fourth part of a *pala*. The words *pûraṇa* and *dharaṇa* are the names of a silver coin which is the tenth part of a *pala*. Of the fourteenth part of a *karṣha*, a silver coin, the technical name is *mâṣha*; of ten *palas* the name is *dharaṇa*; that, moreover, should be understood to be in reference to substances other than silver, as the silver *dharaṇa* is of a small measure. The name *pala* should be understood to be (applicable) in reference to all substances, as there is no particularisation in any Smṛti. The word *suvarṇa*, however is expressive of a gold *Karṣha*, as **Amarasiṇha**[3] has particularised in (the text): "The words *suvarṇa* and *bista* are used for a gold *karṣha*". *Akṣha i.e.* for *karṣha*, as the **Same Author**[4] has said: "These sixteen *Akṣhas* are equal to a *Karṣha*, not in the feminine gender". The sixteenth part of a *Karṣha* has the technical name of *mâṣha*; that, moreover, is to be understood in regard to substances other than silver, as a silver *mâṣha* is the fourth part of a *Karṣha*. The word *Kṛshṇala*, however, is expressive of the eighteenth part of a *Karṣha*, as it is the fifth part of a *mâṣha*. In this manner the limit as to substance, should be deduced by oneself in regard to the meanings of the words *sarṣhapa*, *likṣhâ*, *trasareṇu*. In the expression *yavamadhya*,

1 कृष्णल-रत्तिका or Guñjâ-berry.

2 Ch. VIII. 132–137—See Yâjñavalkya. Book I. 362–365.

3 Book I. 365.

4 II. 9–86.

'middle-sized barley-corn,' the word *madhya* is used for the purpose of completing [1] the verse ; so has been stated in the commentary on it.

In the case os a *trasareṇu* the technical name of *padmaraja* also has been pointed out in **Purâna** : " When eight *paramâṇus* combine together known by the name of *trasareṇu*, that is called *padmaraja* (lotus-dust)." The word *Mâṣha* is used for the twentieth part of a *Kârṣhâpaṇa*; so says **Kâtyânana** : " *Mâṣha* should be known to be the twentieth part of a *Kârṣhâpaṇa*, while *kâkaṇi* is the fourth part of a *mâṣha*, and also of *a paṇa*. In the land of the five rivers the nomenclature is in current practice ".

The word *suvarṇa* is expressive of twelve *palas*, so says **Bṛhaspati** : " A sign of a *Karṣha* made on copper should be known a *Kârṣhikapaṇa* ; the same is called *chaṇḍikâ*, while these four, a *dhânaka* ; these twelve however, a *suvarṇa*, the same indeed is called *dînâra*. " **Kâtyânana** also : " A *kârṣhâpaṇa* is to be known as *aṇḍikâ*, these four however (make one) *dhânaka* ; these twelve, however, a *suvarṇa*, known in the *Smṛtis* as *dînâra* and *chitraka*. "

In regard to *pala*, however, an alternative has been indicated by **Yâjñavalkya** [2] : " Pala is four *suvarṇas*, or even five also, so it has been

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1 श्लोकपूरणार्थः.

Put briefly and in Tabular form, the several measures stand as stated below ;

GOLD MEASURES.

The dust particle visible in the sun's rays = *Trasareṇu* (त्रसरेणु).

8 *Trasareṇus* = 1 *Likṣhâ* (लिक्षा).
3 *Likṣhâs* = 1 Black mustard (राजसर्षप) *Râjasarṣhapa*.
3 Black mustards = 1 white mustard (गौरसर्षप) *Gaurasarṣhapa*.
6 *Sarṣhapas* = 1 *Yava* (यव).
3 *Yavas* = 1 *Kṛṣhṇala* (कृष्णाल).
5 *Kṛṣhṇalas* = 1 *Mâṣha* gold (सुवर्णमाषः).
4 *Savarṇas* = 1 *Pala* (पल) also (निष्क) *Niṣhka*.
10 *Palas* = 1 *Dharaṇa* (धरण).

SILVER MEASURES.

2 *Kṛṣhṇalas* = 1 *Mâṣhaka* (माषकः).
16 *Mâṣhas* = *Dharaṇa* (धरण) or *Pûraṇa* (पूरण).
10 *Dharaṇa* = *Śatamâna* (शतमान or पल) or *Pala*.

COPPER MEASURES.

11 *Paṇa* or *Kârshâpaṇa* = Pala or ¼ *Karṣha* (कर्ष).
11 *Prasṛti* प्रसृति = 2 *Palas*.

2 Book I. 364.

declared." A silver *kârṣhâpaṇa* also exists ; so says **Nârada** : "In the southern part a silver *kârṣhâpana* is in circulation." **Vyâsa**, however, states the measure of a gold *niṣhka* : "Eight *palas* of *suvarṇa*, and fourteen *suvarṇas*, this is the measure of a *niṣhka* declared by Vyâsa ".

In this respect, in regard to the punishment for an ordeal, the *Mâṣhas* and measures other than those stated by **Manu** should not be accepted when in contradiction with the usage of the country's transactions. The measure stated by **Manu**, such as the '*Mâṣha* etc.' in regard to penalty for an ordeal must certainly be accepted even if in contradiction with the usage of the country's transactions. To that effect also **Bṛhaspati** [1] : "The enumeration (of measures) for which the dust in (the Sun's) rays are the basis, and which has been declared by Manu, ending with *kârṣhâpaṇa*—that should be used in regard to (the administration of) ordeals as well as of punishment ". The use of the expression 'ending with *kârṣhâpaṇa*' is with the object of demonstrating that this rule is not applicable in regard to the *niṣhka* measure, and thus an ordeal which may be hereafter referred to by regard to another *niṣhka* will be uncontradictory.

Thus in the **Smṛtichandrikâ, texts about Petty** and **Serious charges.**

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Now the **adjustment of Ordeals according to the amount of money** (involved) **Dhanaparimâṇato Divyavyavasthâ.**

There **Kâtyâyana** : "Where there is a denial of a (completed) gift, there one should determine the measure of relief". 'Denial', *i. e.* evasion.

How should one determine it ? Anticipating this question, says the **same Author** : "After ascertaining the extent of the entire amount, one should fix gold as the standard (of measure) ; and taking the gold standard as the measure, then should one administer the ordeal. After ascertaining the quantity in (terms of the) *suvarṇa*, in the case of a hundred, the (ordeal of) poison has been prescribed ; while for a loss of eighty, one should administer the fire (ordeal) ; for a loss of sixty, the water (ordeal) should be administered; while for (a loss of) forty, the balance ; for a loss of twenty and ten, however, the drinking of the Kośa has been ordained; for a loss exceeding five, or of a half of that, the rice ; while for a loss of a half of that, one should touch the head of the son, or the like ; and for a loss of half of that also, the ordinary modes of proof also have been stated."

1. Ch. X. 13.

In all the cases, the word 'loss' should be understood as indicating denial, as the passage has commenced with the 'suppression of a gift.' 'Loss of twenty and ten,' i. e. loss of thirty; or loss of twenty, or loss of ten; 'more than five,' is 'exceeding five' e. g. six and further on; 'of the half of the half of that,' i. e. one and half gold *prasṛti*; upon a loss of that, rice; upon a loss of half of that, half a *suvarṇa prasṛti* less by an eighth part, touching of the head of a son and wife; 'upon the loss of a half of that, however,' i. e. upon the loss of seven and half *kṛṣhṇala prasṛti*, ordinary oaths, eight times the amount, and the like. The word *cha*, 'also', is intended to indicate the inclusion of oaths stated in the Smṛtis.

Hence **Viṣhṇu**[1]: "In all kinds of (claims relating to) property, the value (of the subject matter) should be estimated in gold; there, if (its value amounted to) less than one *kṛṣhṇala*, a *Śûdra* should be made to swear by a blade of Dûrvâ grass (by holding it in this hand); if it amounts to less than two *kṛṣhṇalas*, by a blade of *Tila*; if it amounts to less than three *kṛṣhṇalas*, by a blade of silver; if it amounts to less than four *kṛṣhṇalas*, by a blade of gold; if it amounts to less than five *kṛṣhṇalas*, by a lump of earth taken from a furrow; if the amount is twice as high (as in each of the last mentioned cases) a Vaiśya must (in each case) undergo that ordeal which has (just) been mentioned (for a Śûdra). A Kṣhatriya must undergo the same ordeals if the amount is thrice as high. A Brâḥmaṇa if it is four times as high." 'A lump of earth taken from a furrow' i. e. a handful lifted up by a plough. The use of the expression 'less than' is intended to exclude the rule of oath in regard to man.

In regard to an oath, however, **Manu**[2] states a special rule: "He (the judge) should cause a Brâḥmaṇa to swear by his veracity (*satya*); a Kṣhatriya by his vehicle, and by his weapons; a Vaiśya, by his kine, grain, and gold; and a Śûdra by (imprecating on his head the guilt of) all heinous sins (*pâtakas*)." The meaning of this: 'If I am guilty of concealing the subject matter in issue, then my religious merit called truthfulness may become fruitless' thus he should cause a Brâḥmaṇa taking an oath to declare; in that manner the Kṣhatriya and the rest. In the place of 'my religious merit called truthfulness may become fruitless,' 'my conveyances and weapons, may become useless' in the case of Kṣhatriya, 'my kine, grain, and gold may become useless' in the case of a Vaiśya, and 'may all sins come to me' in the case of a Śûdra. This is the differentiation.

1 Dh. S. Ch. IX. 4, 9 and 12–14. 2 Ch. VIII. 113.

The subject of touching the feet has been pointed out in **another Smṛti**: "For a *niṣhka*, however, an oath of truthfulness, for two *niṣhkas* touching the feet, for less than three, however, a flower, and for higher than that, the drinking of the *Kośa*.". By the word *niṣhka* (as used) here is indicated the fourth part of a golden *karṣha* and stamped with the (royal) signet; there also in some regions the transaction is in *niṣhka*.

It may be said, indeed, by reason of the rule that 'the *mâṣha* etc.' stated by **Manu** must be taken in the matter of ordeals, it is not proper to set up a *niṣhka* used in ordinary transactions; (the answer is) no, not so; it has been stated that in regard to *niṣhka* the rule stated by **Manu** does not apply; moreover in such a case, the value of a *niṣhka* stated becomes more than one and half a golden *karṣha*. There in regard to the rule of affirmation by veracity, there would be a contradiction with the text of **Viṣhṇu** viz: "A Brâḥmaṇa, if it is four times as high"; for four times five *kṛṣhṇalas*, is a fourth part of a *karṣha*. Therefore it should be understood that the adjustment about an affirmation by veracity etc. should be by the current *niṣhka* used in ordinary transactions. By deduction, the staking of the merit accrued from *Iṣhṭa* and *Pûrta* acts, should be understood to be in regard to property which is more than the affirmation by castes, but less than the ordeal of religious merit.

AN OBJECTION

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Bṛhaspati [1] states the subject of *Dharma*: "When a hundred had been stated or falsely denied, the purgation by Dharma should be administered". The meaning is that the Ordeal of Dharma is administered at the lowest when the value is a hundred *kârṣhâpaṇas*; and further on at the middlemost, for two hundred and higher; and the highest for four hundred and larger amounts; the **Same Author** [2] having stated that "These figures are applicable in the case of low persons; for persons of the middling kind, double is ordained; and for persons of the highest rank, four times as high".

The value of a kârṣhâpaṇa is the eightieth part of a *niṣhka* current in ordinary transactions. A *kṛṣhṇala*, moreover, is the twentieth part of a current *niṣhka*; while a *suvarṇa* is a fourth [3] part of a current *niṣhka*. Thus, the adjustment of all the ordeals by regard to the current *niṣhka* should be understood to be as follows: Commencing with four hundred *niṣhkas* and onwards, the poison; three hundred and twenty *niṣhkas* and onwards, the fire; or two hundred and forty *niṣhkas* and onwards, the

1 Ch. X. 11. 2 Ch X. 12.

3 निष्कचतुर्थ; another reading is निष्कचतुष्क— 4 *Niṣhkas*; thus the two readings have a variation of 1 : 16.

water ; from hundred and sixty *niṣhkas* ; the balance, one hundred and twenty *niṣhkas*, the *Kośa* ordained for a serious charge. The same *kośa* may be for cases of eighty *niṣhkas* upwards, or forty *niṣhkas* upwards, or twenty-four *niṣhkas* and upwards. For six *niṣhkas* or higher, the rice ; for five *niṣhkas* or upwards, in the case of the highest-born, the ordeal shall be of Dharma ; for a *niṣhka* and higher, the purgation of *Iṣhṭa* and *Pûrta* and the like meritorious acts ; for a fortieth part of a *niṣhka* and onwards, the ordinary oaths ; for a twentieth part of a *niṣhka* and upwards, oaths by castes. For these, the rules about holding the *dûrvâ* blades in the hand and the like should be understood in accordance with the text of **Viṣhṇu** [1].

This adjustment is in regard to ordeals other than of Dharma, such as the balance and others, and not to be resorted to in cases of theft of property; since in the case of theft of property **Bṛhaspati** [2] has stated the adjustment in another manner : "The (ordeal of) poison should be administered when a thousand has been stolen ; for a quarter less, the fire ; for three quarters less, the water; and the balance may be administered always. In a charge for four hundred, however, the red-hot *mâṣha* should be administered ; for three hundred, the rice should be administered ; and the *kośa* also for a half of it ; when a hundred has been stolen and falsely denied, purgation by Dharma should be administered. For a cow-thief the (ordeals of) ploughshare should be administered by the assessors with effort. These are for the lowest (persons) ; for persons of a middling class double is figures ordained ; and for persons of the highest rank, the amount is to be fixed four times as high by persons entrusted with judicial affairs".

Here it should be understood that the balance which has been fixed for a serious charge (and the same) having been stated to be for the case of a theft of five hundred *kârṣhâpaṇas* or more, an accusation in regard to that amount of *kârṣhâpaṇas* or more (should be taken to be) a serious charge (*Mahâbhiyogaḥ*) ; for a less amount than that, a small charge (*Alpâbhiyogaḥ*).

Hence also the **Saṅgrahakâra** : "Whether it be a loan, or a penalty, or a penance even, where the beginning is five hundred, that cause is called great (*guru*) ; where commencing with ten and onwards going as far as one and four hundred, that cause has been called small (*laghu*), by the experts in the rules of Smṛtis". 'As far as one and four hundred,' i. e. five hundred. 'By loan', has been stated, indifferently, the property in dispute. The meaning in substance is that in the case of an accusation where money is not the subject matter, the greatness or smallness should be

1 Ch. X. 4-9. See above p. 186. 2 See Ch X. 9-12.

inferred from either the amount prescribed as a penalty, or the penance and their corresponding amounts.

As to what has been stated by **Yâjñavalkya**[1] : "Never until (the limit of) one thousand (is reached) should the plough be administered, nor the (ordeal of) poison, or the balance (likewise)", that is for the prohibition of those who may fall under the middling category by regard to their conduct, as in the case of the middling group, there is no serious charge (*Mahâbhiyoga*) for a denial or concealment of less than a thousand.

Thus, moreover, in the case of the highest, there being a small charge for less than two thousand, the prohibition of the balance

PAGE 102 * and the like may be inferred. As to what, moreover, has been stated by **Pitâmaha** : "For a thousand, one should administer (the ordeal of) balance, and similarly for half of a thousand, the iron; but for a half of a half, the water; and for a half of it, however, the (ordeal of) poison has been declared," that has a reference to a person who had a previous conviction. As says **Vishṇu**[2] : "To one formerly convicted of a crime, even though the matter be ever so trifling, one of the ordeals must be caused to be performed." Thus, therefore, the meaning of the text of **Pitâmaha** should be understood to be that, even in the case of the highest in the case of the one with a previous conviction for a thousand; fourfold in a small matter, the (ordeal of) balance comes to be used.'

In this manner, for (the offences of) treason against the king, and also in (serious) accusations of *Mahâpâtakas* and also even for a small matter, ordeals have to be administered ; so says **Yâjñavalkya**[3] : "And in cases of offences affecting the king, and in serious charges, the parties should always undergo an ordeal after having purified themselves". **Vishṇu**[4] also : "Now follows the performance of a condition : In cases of treason against the king, or of violence, according to the desire (of the judge)". 'Performance of a condition', i. e. performance of an ordeal, such as the balance and the others. Moreover, after the maxim of the cow and the bull, **Bṛhaspati**[5] states the (ordeal of) balance etc. only, here: "These oaths, however, have been ordained, which are easy to perform and proper for trifling occasions; in cases of charges for heinous offences, they direct ordeals as the (means of) purgation". In the same way also, it should be remembered that the oaths by veracity which have been stated, can never be (prescribed) in the case of violence or the like. In the case of

1 Book II. 99. 2 Ch. IX. 18.
3 Book II. 99. 4 Ch. IX. 1-2. 5 Ch. X. 7.

theft also, the adjustment will be explained in terms of the amount of **Niṣhkas** current in the transactions.

For (a man of) the highest class, in cases of fifty *niṣhkas* or more, the (ordeal of) poison; for thirty-seven and half *niṣhkas* or more, the (ordeal of) fire; for seven *kṛṣhṇalas* and thirty-three *niṣhkas* also or more, the water; for twenty-five *niṣhkas* or more, the balance; for twenty *niṣhkas* and more, the heated *mâṣha*; for fifteen *niṣhkas* and more, the rice; for seven and a half *niṣhkas*, the *kośa*; for five *niṣhkas* and more, the ordeal of Dharma; for a four units of cows and more, the ploughshare.

For a man of the middle category, for (a case valued at) twenty-five *niṣhkas* or more, the poison; for nineteen and a quarter *niṣhkas* and more, the fire; for sixteen *niṣhkas* thirteen *kṛṣhṇalas*, and a *yava*, the water; for twelve and a half *niṣhkas*, the balance; for ten *niṣhkas* and more, the heated *mâṣha*; for seven and a half *niṣhkas* or more, the rice; for four and three-fourth *niṣhkas*, the *kośa*; for two and a half *niṣhkas*, the ordeal of Dharma; for two units of cows or more, the ploughshare.

As for the man of the lowest class, however, for twelve and a half *niṣhkas* and onwards, the poison; for nine [1] *niṣhkas* and seven and a half *kṛṣhṇalas* or more, the fire; for eight *niṣhkas* and seven *kṛṣhṇalas* less by a *yava*, the water; for six and a quarter *niṣhkas* or more, the balance; for five *niṣhkas*, the heated *mâṣha*; for four niṣhkas, less by a quarter and more, the rice; for two *niṣhkas* less by half a quarter, the *kośa*; for a *niṣhka* and a quarter, or more, the ordeal of Dharma; for one unit of a cow or more, the ploughshare.

For persons with previous convictions, even for a trifle in excess of the stated limit, the respective ordeals should be administered. In charges for treason against the King, or heinous offences, should be similarly administered. In regard, however, to the oaths commencing with veracity and ending with flowers, as no particular (rule of) adjustment has been seen here, the adjustment should be made in the same manner as in the case of concealment; as in the text of **Viṣhṇu** [2] and of another Smṛti also a special mention has been made as in the case of concealment.

Thus in the **Smṛtichandrikâ** the **adjustment of ordeals according to the magnitude of property.**

1 Both the editions viz. the Collections (p. 102 p. 207) as also the Mysore Edition Part III p. 238. l. 19 read सार्धसप्तकृष्णलाधिकनवतिनिष्कप्रभृत्याम्निः. Apparently नवति is a wrong reading, as it does not fit in with the context. For the translation, therefore, the word नव is taken in the place of नवति in the print. 2 Ch. IX. 3.

Now the **rule of adjustment of Ordeals according to the caste of the Disputants—Jâtyâdito -Divyavyavasthâ**

There, **Bṛhaspati**[1] : "In disputes regarding debts, or like other matters, when there is a disagreement between the parties, (an ordeal) should be given in accordance with the amount (in dispute), and by regard to the party (concerned) likewise." 'By regard to the party' *i. e.* by regard to the caste of the two disputants.

There **Nârada** states the (rule of) adjustment by regard to the caste : "To a Brâhmaṇa should be administered the
PAGE 103* (ordeal) of balance ; for a Kṣhatriya, the fire ; for a Vaiśya should be administered the water (ordeal) ; while for a Śûdra, poison only. *The kośa* has been proclaimed by the wise men as (the ordeal) in common for all."

Moreover, this is not a fixed rule, as says **Kâtyâyana** : "Or all Ordeals for all; (but) the poison (ordeal) is to be avoided in the case of the highest of the twice-born."

By regard to the sex, want of capacity, and age also, **Nârada** states a rule of adjustment : "To the impotent, the sick, persons devoid of probity, men oppressed on all sides by calamities, the minors, the aged, the women, and the blind also, one should always test these by the (ordeal of) balance." This, moreover, is a fixed rule; as the word 'always' has been mentioned. The use of the word 'balance' is intended to exclude (the ordeals of) fire, water, and poison, but not of *kośa* also ; as says the **Same Author** : "For women, however, never has the poison been stated, nor has the water been declared. The real fact in their case should be examined by means of the balance, *kośa*, and the like."

By saying 'by means of the balance and the kośa', the Author points out a prohibition of the fire also. And it has been pointed out directly **by him** :[2] "Women and children must not be subjected to the ordeal by water by persons experts in the Dharma Śâstra ; as also the sick and those who are old or feeble. Even if these happen to have come in, in connection with a heinous offence, one must not cause them to be immersed in water, nor must one cause them to carry fire, or to bring about their purification by (the ordeal of) poison."

As to what, moreover, has been stated by **Pitâmaha** : "For those who are in the midst of a vow, those with a lean body, and for the minors, the aged, and those engaged in austerities, there shall be administered no

1 Ch. X. 8.

2 Ch. I. 313–315.

ordeal, if the law is to be followed," that has a reference to the (ordeals of) fire and water ; for (if it be taken) to exclude even the balance, *kośa*, or the like, there would be a contradiction with the aforestated text. Thus, therefore, it should be construed that for the impotent and the like, the ordeals excepting those of fire, water, and poison, shall be administered.

Likewise, for the ironsmiths and like others also, not all the ordeals are permissible ; so says **Kâtyâyana** : " Not to the ironsmiths, the (ordeal) of fire, nor water to those who subsist on [1] water, so also to the experts in charms and *yoga*, not the (ordeal of) poison should one administer on any account ; one must not prescribe the rice for a person with a scar [2] or a disease of the mouth." **Pitâmaha** also : " In the case of lepers, one should avoid (the ordeal of) fire, water in the case of asthmic persons ; and for the billious or persons of phlegmatic humour, one should always exclude the (ordeal of) poison ; similarly also to the drunkards, to women, and to vicious persons, and to rogues, likewise, the (ordeal of) *kośa* must not be administered by wise men, as also to those who propound atheistic views.

Nârada[3] also : " In the case of a heinous crime, irreligious or ungrateful men, eunuchs, low rascals, atheists, and convicted persons, one should entirely exclude the administration of *kośa*." ' In the case of a heinous crime,' *i. e.* in the case of a person who has by habit been convicted of a heinous crime before. Thus, moreover, it should be inferred that in the case of an impotent person, like the fire, *kośa* also should be excluded.

As to what, moreover, has been stated by **Kâtyâyana** : "Those accused of murdering the father, the mother, a twice-born, the guru, an infant, a woman, or the king, those who are tainted with *Mahâpâtakas* (great sins), and the atheists particularly, those who carry the mark [4] of their faith, the confirmed rogues, and those who are adepts in the practice of charms and *Yoga*, the issue of the mixture of the *varṇas*, those who are habitually inclined to sinful acts, in regard to these who are accused of these censurable acts, never should a king with an attachment for Dharma administer an ordeal," that is intended as a prohibition of an ordeal to be

1 अंबुसेविनाम् *i. e.* who earn their livelihood in water.

2 व्रणिनं. This passage has various readings in the several digests and their editions. The Mysore edition of the Smṛtichandrikâ reads (p. 240) घ्राणिनं, for व्रणिन' the reading adopted in this series ; the Ânandâsrama edition of Aparârka reads क्षतिनं (p. 699) and M. M. Kane adopts the reading व्रतिनं (Verse 424).

3 Ch. I. 332.

4 लिंगिनां.

performed by them directly, but not for a trial by means of an ordeal; since immediately after this, has been stated by the **Same Author**: "An Ordeal may be permitted to good men appointed by these very persons; where good men do not desire, there he (*i. e.* the accused) may have his exhoneration through his own men". 'An ordeal may be permitted', *i. e.* the King may allow it to be administered. To that effect the **Same Author**: "In these (kinds of) disputes those ordeals which have been prohibited (for them), the king should get these performed by their own[1] men with effort. He should not give up the accused person; as says Manu." 'Give up' *i. e.* having him purged in the manner stated.

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As for what has been stated by **him**: "In the case of the untouchable, the[2] slave of money, the *mlenchhas*, and the offsprings of unions in the inverse order of the *Varṇas*, the decision (as to an ordeal) does not, however, rest with King; in the case of a doubt, the ordeals well known among these (classes) should one direct (to be administered)", that should be understood to have a reference where their own men appointed by them are not available.

Thus the **Rule of adjustment according to the disputants' caste etc.**

Now the **Adjustment of ordeals by regard to seasons. Rtuto Divyavyavasthâ.**

There **Pitâmaha**: "The balance has been prescribed for all the seasons; when the wind blows, one should give it up; the fire in the Śiśira and Hemanta and during the rainy season has been declared; in the Sarad and the Grîṣhma, the water, and in the Hemanta and Śiśira the poison." The use of the balance is intended to indicate the *kośa* also, v ide the text of **Nârada**: "The ordeal of *kośa*, however, may be always admi nistered, the balance is for all times. The use of (the word) *kośa* is indicative of rice and the rest, so has been stated by the *commentators*. Therefore, of the (ordeals of) fire, water, and poison alone is the adjustment by regard to seasons. Hence also of these, even a prohibition in other seasons has been pointed out by the **Same Author**[4]: "The ordeal by wa ter must not take place in the cold weather, nor in the hot season the purgation by fire; nor should one

1 स्वजनैः another reading is सज्जनैः—by good men.

2 , धनदासानां—another reading is अधमदासानां 'slaves of the lo west class'.

3 A year is divided into six seasons or *Ṛtus*, viz. *Vasanta, Grîṣhma, Varṣhâ, Śarad, Hemanta* and *Śiśira*, each *Ṛtu* covering two months, commencing with *Chaitra* and endi ng with *Phâlguna* consecutively.

4 Ch. I. 259.

administer poison during the rainy season, nor should the King administer the balance in stormy weather." **Viṣṇu** [1] also: "To the leper, to the infirm, or to the ironsmiths, the (ordeal of) fire must not be administered, nor in the Sarad or the Grîṣhma also. The (ordeal of) poison must not be administered to lepers, to billious persons, or to the Brâḥmaṇas. The (ordeal of) water must not be administered to persons afflicted with phlegm or (other) illness, to the timid, to the asthmatic, nor to those who gain their subsistence from water (e. g. fishermen etc.). Nor during the two seasons of Hemanta and Śiśira, the ordeal of *kośa* must be administered to atheists; nor when the country is afflicted with disease or death."

The use of the word Hemanta is intended to prohibit in the month of Puṣhya and not of the Mârgaśîrṣha also; as by reason of the absence of excessive cold during that (season), there would be an absence of prohibition against the water ordeal. In this connection **Pitâmaha**: "Chaitra and also Mârgaśîrṣha, the Vaiśâkha similarly also, these months are generally unobjectionable for the ordeals."

Thus the **Adjustment of ordeals by the Seasons.**

Now the **Places for the ordeals – Divyadeśâḥ.**

There **Pitâmaha**: "Facing the east, should the balance be constructed (so as to be) immovable, always at a pure place, at the place of Indra, or in the Court, or at the King's gate, or at a cross-road." 'The place of Indra' *i. e.* the abode of a wellknown deity; as **Nârada** [2] has stated: "In the Court, or before the gates of the King's palace, or in sight of an abode of the Gods, or a cross road." Here **Kâtyâyana** states a

PAGE. 105* rule of adjustment: "In the place of Indra, for men accused of *Mahâpâtakas* (heinous sins); for those (accused of) attempting treason against the King, should be fixed at the gate of the royal residence; for the issue of a marriage in the inverse order, the ordeal should be administered at a cross-road; while for other matters the wise declare it to be in the Court room." By the use of the word 'Ordeal' generally, it should be understood that this rule is not confined to balance only, but that (it is) for others also, for which any particular place has not been mentioned.

The **Same Author** says that by disregarding (the rule as to) the prescribed place, the conclusiveness of an ordeal is destroyed: "Ordeals adminis-

1 See Ch. IX. 25–32. 2 Ch. I. 265.

tered at an improper place or time, as also those which are performed outside the habitation, bring about a disruption of the matters in hand; here (there is) no doubt." "Habitation' *i. e.* place of residence, peoples' place; outside of that; *i. e.* in short, in a lonely place. By this it comes to be stated as of course, that ordeals must be administered in the presence of the people only. It has also been stated by **Pitâmaha** : "The ordeals should be administered by the king or by a person duly authorized (by him) in his own personal presence, as also of the Brâhmaṇas learned in the Vedas, and also of the subjects likewise". 'Duly authorized', *i. e.* the Chief Judge.

Thus the **Place for the Ordeals.**

Now the **Rule regarding the Preparation of the Balance.—Dhaṭanirmâṇavidhiḥ.**

There **Nârada** [1] : "One should cause it to be made of the Khâdira wood (which must be) without notches or withered portions, or of the Siṁśapâ wood; or when that is not available, of the Sâla wood, and devoid of rents; of Añjana, Tinduki, Sâra, Timisa, red sandal; woods of these kinds should be determined upon for the balance." By saying 'of these kinds', the Author indicates that in the absence of those stated above, any other sacrificial [2] tree may be taken.

It has also been pointed out by **Pitâmaha** : "After cutting down a sacrificial tree preceded by (the incantation of) the hymns, and in accordance with the rules, and after saluting the guardian deities of the quarters, the balance should be constructed by the wise. The hymn in honour of God Soma should be muttered softly at (the time of) the cutting up of the tree." An option has been stated by some as regards the hymns to Soma or Vanaspati, on account of the result to be secured being similar. The use of the word 'balance' is intended to indicate its surrounding parts also. Therefore for the purpose of the feet, posts, also a tree should be cut.

Hence also, the measure of a balance with its surrounding parts has been stated by the **Same Author** : "The balance should be of four *hastas* and the two feet should also be constructed of the same size. The space intervening between the two, however, should be two *hastas* or half a *hasta* more." 'The two feet' *i. e.* the two pillars holding the wood called axis which supports the balance; 'of the same sort', *i. e.* the meaning is four *hastas* by measurement.

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1 Ch. I, 268.

2 ...

This measure of the two posts should, moreover, be understood to be of the upper part of the two arms to be dug up ; therefore these become of six *hastas* (together) with the part to be dug up. To that effect, moreover, **Vyâsa** [1] : "These two heads have been stated to be dug for two *hastas*; hence the size of these two by measurement has been stated to be six *hastas*." The size of the axis, however, has been automatically established by the mention of the two feet and the intervening space, and therefore has not been separately mentioned. From this, it should be understood that the axis should be so constructed that it will not protrude beyond the top portion of the pedal pillars, so that it should be more than two or two and a half *hastas*. A *hasta*, moreover, is made of twenty-four *aṅgulas* ; so has been pointed out in **Another Smṛti** : 'Eight middle portions of a slanting *yava* or three *vrîhis* held topwise, has been stated to be the measure of the *aṅgula*; a *vitasti* is

PAGE 106* of twelve *aṅgulas*, (and) a *hasta* is made up of two *vitastis*". The balance etc. should be made stout to such an extent that these would become strong ; or the particular degree of stoutness should be known from usage, as no particular text has been prescribed.

In regard to the balance, however, other particulars have been pointed out by **Pitâmaha** : "A quadrangular balance should be made which should also be strong and straight ; rings also should be fastened at three points with effort." 'Rings' *i. e.* iron bracelets ; 'at three points,' *i. e.* near the two ends, and at the middle also ; the word 'rings' is indicative of other iron parts also. Therefore, two iron nails slightly bent and resembling the horns of a crab should be fixed near the two ends for holding the strings of the scales. In the middle, however, an iron chain should be fixed in the axis wood for the purpose of placing the balance. So also **Nârada** [2] : "Quadrangular with the places such as the balance, and hooks etc." Here, by the word 'balance' (*dhaṭa*) is intended the cord connected with the centre of the balance ; by the word 'hooks' are expressed the nails near the end by reason of the resemblance. Thus the meaning is this : The balance should be fixed with iron chains etc. which would ensure stability. By the use of the word *Âdi* '*etc.*' the author points out that in the axis also there should be one hook.

Likewise, the method of the instalment of the post also has been pointed out by the **Same Author** :—"Placed on the south and the north, the

1 C/O. Nârada Ch. I. 261. 2 Ch. I. 263.

two being joined together, and after having made the ends even on that ground, the balance should be established on the two." The meaning of this : The footposts placed at an equal distance in the direction of the south and the north, having made the two ends tied together on the axle wood, in the midst of these two, on the axle of the balance, the scales should be established.

How then should it be established ? So the **Same Author** proceeds : "After having well tied the iron chains gathered in the middle space, one knowing the law should place the balance well joined together east to west." 'East to West' viz. East to West lengthwise. It should be made with its end towards the east. So says **Pitâmaha** : "The balance should always be placed facing the east, unmovable, and on a pure place."

Nârada [1] states for the purpose of ensuring steadiness : "The two posts should be dug in every case to the depth of two *hastas* below the ground in that manner". By saying 'in that manner' the Author points out that something else also should be constructed as part of the balance, such as the arch and the like. That has, moreover, been pointed out by **Pitâmaha** : "The arches should be created in the rear of both the posts, which should always be higher by ten *aṅgulis* than the balance ; then two suspenders of clay should be prepared, hanging downwards from the arches tied together by ropes and touching the top of the balance. The balance should always be caused to be constructed decorated with buntings and flags ; a balance house should be caused to be constructed wide in extent, and of great height, and of white colour, at such a place from where when placed, it would not be disturbed from the outside by the Chaṇḍâlas or crows. The guardian Deities of the quarters and the like should be duly established in all directions, and at the three junction periods one should duly worship these by means of scents, flowers, and smears. The king should cause it to be furnished with doors and locks, guarded by sentinels, and furnished with earth, water, and fire, and should not leave it unattended".

Here, it has been stated by some, that the construction of a house etc. is on account of the object of (having) a fixture for the balance, and it is not due to any injunction or rule, and therefore when there is no desire to fix it, it should certainly not to be constructed.

Thus the **Procedure regarding the preparation of a balance.**

1 Ch. I, 261. 2 Ch. X. 16.

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Now the **law** (applicable in) **common** to all **the ordeals.**

There **Bṛhaspati**[1] : "Either through affection, anger, or covetousness, witnesses are liable to betrayal. But in the case of an ordeal properly administered according to the rules, there can never be a miscarriage at any time." Therefore, the import is that an ordeal should be administered duly according to the rules. The law, moreover, has been pointed out by **Pitâmaha** : " In regard to ordeals, all the details should be properly observed by the Chief Judge, like the Chief priest at sacrifices, after fasting, and under the King's order." 'All the details' i. e. general as well as special.

There the general ones have been pointed out by the **Same Author** : "Thereafter, one knowing the law should invoke the deities under the following rules." 'The following' i. e. about to be stated. The **Same Author** points out the rule itself : "With his face turned towards the east, with hands joined in cavity, the Chief Judge should then address as follows : 'O God Dharma, come. O come, and be seated in this ordeal accompanied by the guardian deities of the quarters, and by the groups of the Vasus, Âdityas and Maruts.'' Thereafter *i.e.* after having decided upon an ordeal as is indicated by the expression 'in this ordeal', and as has been observed by the **Same Author** : " And after having invoked the God Dharma in the balance, thereafter the other parts should be cast[2] in upon ". The use of the word ' balance ' is indicative, by an extension, of the particular ordeal under contemplation ; for in the case of all the ordeals, the invokation of the Dharma, and placing of all the parts will be stated hereafter.

By the **Same author** has been pointed out the meaning of the expression ' assignation of the parts ' :—" Having established Indra in the East, and the Lord of the Dead (*Pretesaḥ*) in the South, Varuṇa in the portion towards the West, and Kubera in the North, he should place Agni and other guardian Deities of the quarters in the parts in the corners."

" Indra has the yellow colour, Yama the blue, and the colour of Varuṇa is like that of the *sphaṭika* stone ; Kubera, moreover, has the lustre of gold, and the god of Fire also possesses the golden hue. Similarly, the Nirṛtiḥ is known to be blue, and Wâyu (the god of wind) smoky. Îśâna is, however, red. Thus should all these be contemplated in the order (mentioned above). A wise man should worship the Vasus on the southern

1. Ch. X. 16.

2 विन्यसेत् *i. e.* should make the न्यास, *Nyâsa*—assignation of the various parts to different divinities as is detailed hereafter.

side of Indra. Dhara, Dhruva, and similarly Soma, Âpa, Anila, Nala, Pratyûṣha, and Prabhâta, are known as the eight Vasus.

"Similarly the group of the Âdityas should be placed between the Lord of the Gods and the Îśâna. Dhâtâ, Aryamâ, and Mitra, so also, Varuṇaḥ, Aṁśuḥ and Bhagaḥ, likewise Indra, Vivaswân, and Pûṣhâ and Parjanya known as the tenth; then Twaṣhtâ, and then Viṣhṇu not the last, though born of the last, these are the twelve Âdityas described by their names."

"The point towards the west of Agni is known to be the place for the Rudras, Vîrabhadra, Śambhuḥ, Girîśa of great fame, Ajaikapâd, Ahirbhudhnya, Pinâki the never defeated; so also Bhuvanâdhîśvaraḥ, Kapâli, the lord of the people, Sthâṇuḥ, Bhavaḥ, and Bhagavân are known to be the eleven Rudras."

"Between the Lord of the dead and Rakṣhas a place should be assigned for the Mother Deities viz.; Brâmhî, Mâheśwarî, and also Vaiṣhṇavî, Vârâhî, Mâhendrî, and Châmuṇḍâ accompanied by the bands of the followers."

"The point to the north of Nirṛti is known to be the place for Gaṇeśa, and the place for the Maruts is said to be at the northern side of Varuṇa; Gaganaḥ, Sparśanaḥ, Vâyuḥ, Anilaḥ, and also Marutaḥ, Prâṇaḥ, and the two viz; Prâṇeśa and Jîva are known as the eight Maruts.

A wise man should invoke the goddess Durgâ at the northern side of the balance."

Here, as before, also the use of the word 'balance' is indicative by an extension of the particular ordeal which has been contemplated. In this manner, one should offer worship to the deities which have been invoked in their respective places.

To that effect proceeds the **Same Author**: "The worship of these deities is, however, known to be by repeating their own names." There also, the **Same Author** mentions the order: "Having offered worship to the Dharma commencing with the arghya and ending with the decorations, thereafter, one should offer *arghya* &c. to the other deities ending with decorations." 'Of the other deities' *i. e.* commencing
PAGE 108* with Indra and ending with Durgâ. The offering of *arghya* etc. to these should be in accordance with the sense of the words, and not in pieces. For in that case, there would be the incongruity of a simultaneity deduced from the text of the details. After having offered decorations to Durgâ, to Dharma, and to the deities

commencing with Indra, and ending with Durgâ one should offer as before, the worship in the form of sandal paste and other articles. So the **Same Author** has stated : "Commencing with perfume, sandal paste, and ending with *Naivedya*, one should offer the worship."

Thereafter one should offer oblations in the four quarters and with four offerings. For, moreover, the **Same Aulhor** says : "In the four quarters likewise should be offered oblations by those proficient in the Vedas, with clarified butter as well as with the oblations and sacrificial material such as the acrificial sticks commencing with the *Praṇava* of *Sâvitri* and ending with the expression *Swâhâ* one should complete the sacrifice." The meaning is that having established the Laukika fire in the four quarters at each point of the quarter, one sacrificial priest should offer oblations consisting of the sacrificial sticks, clarified butter, and boiled rice each, to the number of one hundred and eight with the Mantra 'Tatsavituḥ' (that.....of the bright luminary) with the Praṇava at both ends and ending with the word ' Swâhâ '.

Although here the number has not been stated, it stands established by itself by a text of **another Smṛti** viz. : "Where no number has been stated, the number one hundred and eight has been declared." All this should be performed in the first part of the day, as that is regarded as the principal period. To that effect also **Nârada**[1] : 'The person having fasted for a day and night and taken a bath, having wet clothes on, the administration of ordeals for such a person to be performed has been ordained to be in the forenoon".

As for what has been stated by **Yâjñavalkya**[2] : " Having summoned one who has bathed with clothes on, who has observed a fast, one should at sun-rise make him undergo (any of) all the ordeals in the presence of the King and of the Brâhmaṇas."; there, by the use of the word ' sunrise ', it should be understood by an orientation of language that the forenoon alone has been ordained. Moreover, the forenoon should be that in conjunction with Sunday by regard to the force of usage.

After the oblations, proceeds **Pitâmaha**: " Having written on a leaflet whatever be the offence with which the person is charged, it should be placed on the head with the repetition of this *Mantra*." ' With this ' *i. e.* which will be stated hereafter. The **Author** states that very *Mantra* : "The Sun, the Moon, the Fire, the Wind, the Sky, the Earth, the Water, the heart, and the God Yama, the day as well as the night, the two twilights, and the Dharma also, each knows the actions of a man."

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1 Ch. I. 268. 2. Book II. 97.

This procedure, moreover, is common to all the ordeals. So says the **Same Author** : "This rule and the procedure in its entirety, one should utilise in the case of all the ordeals. The invocation of the Divinities, likewise, should be done in the same manner." The meaning is that all the acts, viz., commencing with the invocation of Dharma and placing the earth on the head of the subject of purification should be done in all the ordeals.

Likewise, at the end of all the ordeals, a good Dakṣhiṇâ which will create satisfaction should be given to the head sacrificial priest and others. To that effect is the **Same Author** : " One should give satisfaction to the sacrificial priests, the head priest, and the other Âchâryas by means of Dakṣhiṇâ."

Thus ends the **Procedure common to all the ordeals.**

Now the **Procedure for the putting up of the balance : Dhaṭâropaṇavidhiḥ.**

There **Nârada** : [1] "After having well fastened the two scales by the hooks of the beam, he should place the man in the one scale, and a stone in the other." The meaning is that having fastened the two ropes to the two scales by the hooks and the beam prepared according to the rules. The use of the word ' stone ' is indicative, by an extension, of earth and the like also. Hence also **Pitâmaha** : " The two scales should be fastened to the sides of both (the posts), and (blades of the) *darbha* grass should be placed in both the seats with their ends turned towards

PAGE 109* the East. In the scale towards the West should be weighed the parties (performing the ordeal) and in the other the clean earth, avoiding the bricks, the ashes, stones, skull, and bones."

The combination of the bricks and the stones with the earth is prohibited ; and there is no optional rule, these two also having been prescribed. To that effect **Nârada** : [2] "There he should place a basket and fill it with bricks, mud, and grains of sand." The meaning is that with bricks, with stones, or with sand grains. Or the basket may be filled with beans as has been stated in **another Smṛti** : " Or a heap of beans." Thus the rule of option should be understood for measuring the balance in the case of stone, earth, bricks, sand grains, and beans. Hence also has been stated by **Nârada** : " The ball of earth and the accused person, one should hold equally in the balance. In the northern scale, one should hold the person, and in the southern, the stone."

1 Ch. I. 271. 2 Ch. I. 272.

The expression 'in the northern scale' has a reference to the balance, constructed extending from the southern to the northern direction. Although a construction in that manner has not been stated before, still from this very text, it has been established as of course, that having constructed the foot pillars stationed east-west, the balance should be constructed leading towards the north, and there is no contradiction whatsoever.

To the expression 'should hold in the balance,' the supplement is 'any one from among the (guilds of) tradesmen etc.' To that effect also is **Vishnu**[1]: "The same, moreover, a man from among the guilds of tradesmen, goldsmiths, or of braziers, should hold (equally)." 'The same' *i. e.* the balance. When held by any one of all these, they should be appointed by the king for the purpose of marking the equipoise. To that effect is **Pitâmaha**: "Persons expert in the weighing of balances should be appointed as judges, such as the tradesmen, goldsmiths, and the braziers likewise also." These when appointed, moreover, should carefully inspect all around; to that effect also **Nârada**:[2] "Goldsmiths, merchants, and skilful braziers, experienced in the art of weighing should inspect (the beam of) the balance."

In regard to (the functions of) the inspectors, says **Pitâmaha**: "The judges should always make the balance even, and in a line with the suspender, and the wise should place water over the balance; that balance should be considered as even wherein the water does not move." The clay suspenders hanging down upon the two arches, the connection of these which is even; on the tops of the two rings is the balance even, and in a line with the suspender. So also **Nârada**:[3] "In the first weighment, the weight of the man should be ascertained with the aid of experienced men, and the arch marked at the height which corresponds to the even position of the two scales."

After ascertaining the evenness says **Vishnu**:[4] "The equipoise and the man having been made equal in weight, and (the position of the scales) well marked, the man should be made to descend from the balance." 'Well marked' *i. e.* for the purpose of marking the evenness, marked with white lines at those points where the ropes of the balance are joined together.

1. Dh. S. Ch. X. 4.
2. Ch. I. 274
3. Ch. I, 273.
4. Ch. X. 6.

After the descent, says **Pitâmaha**: "Having first got the man weighed, and after having got him down, the balance should always be kept adorned with buntings and flags."

After these preliminaries, the procedure common to all the ordeals, *i. e.* commencing with the invocation of the Dharma and ending with the placing of the parchment upon the head of the accused, should be observed. For the **Same author** says: "This *mantra* and the whole of this procedure, one should observe in all ordeals; in the same manner, the invocation of the divinities should be made." There, in regard to the material for the worship of Dhrma, **Nârada** states a special rule: "With red sandal paste, red flowers, curdled milk, fried puddings, rice grains etc. first he should offer worship etc. to the balance, and then should do honour to the respectable." 'Balance' *i. e.* Dharma, posted in the balance; 'The respectable', such as Indra and others.

After placing the leaf on the head of the accused, says **Pitâmaha**: "One knowing the Śâstra should invoke the balance thus: 'O balance, you have been created by Brahman for testing the sinful; from the letter *dha* (in your name) you are Dharma incarnate, and since from the letter *ṭa* (in your name), you determine the guilty man when weighed (in you), therefore you are called **Dhaṭa** (धट)." 'One knowing the Sâstra', *i. e.* the chief judge; as the **Same Author** has stated: "In regard to the ordeals, the Chief Judge should duly perform all the acts".

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Thereafter, the accused also should invoke the balance. To that effect **Yâjñavalkya** [1]: "When men versed in holding a balance have seated a party therein, weighed him against an equal weight, marked a line, and caused him to descend (100); 'O balance, thou art the abode of truth, and wert created by the gods in the olden times; therefore, O, auspicious one, speak the truth, and free me from suspicion (101). O Mother, if it be that I am the sinner then carry me down. If I am pure, carry me upwards,' thus should he (make an) appeal to the balance". The meaning is that with the *mantra*, commencing with 'O balance', and ending with 'me upwards', the accused should make an appeal to the balance before getting in again.

Thereafter the Chief Judge should seat him in again. To that effect **Nârada** [2]: "After having admonished with solemn imprecations, he

1 Book II. 100–102.

2 Ch. I. 276.

should cause the man to get into the seat again, when there is no wind nor rainfall, and after having placed the parchment on his head." 'After having admonished with solemn imprecations', *i. e.* the meaning is, that after having bound the holder of the balance with solemn oaths. The oaths also have been set out by the **Same Author** : "Those regions which have been stated for a Brâḥmicide, those regions (which are) for false witnesses, these regions are for the holder of the balance who holds the balance dishonestly."

After seating him again says **Nârada**[1] : "When he has ascended the scale, a twiceborne man holding the scales (in his hand) should address thus ; 'Thou art called *dhâtâ*, which word is synonymous with *dharma* (justice). Thou knowest of all beings the bad and good actions also ; thou alone, O God, knowest what human beings do not know. This man who has been arraigned in a cause, is (being) weighed upon by thee ; therefore be pleased to free this man, who is under a suspicion, according to Dharma. Thou art far superior to Gods, demons, and mortals in point of veracity ; O divine lord you are linked with truth by means of the auspicious and the inauspicious signs. The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the (god) Yama also, the day, as well as the night, and the two evenings, and Dharma also, (each one) knows the action of men". The meaning is that after having duly placed the accused in the scale in a proper position, the Chief Judge, should address commencing with 'O Dharma' and ending with (the word) 'action'.

After the pronunciation of the mantra **Pitâmaha** : "One knowing astronomy and who is the best of Brâḥmaṇas should observe the interval of time, the interval of five *vinâḍis* should be determined by those who are experts in determining time. Among the umpires the best of the Brâḥmaṇas who would depose only to such (a fact) as has been seen by them, who are wise, pure, and who are not covetous should be appointed by the king ; from their verdict should be inferred the decision about innocence or guilt".

The interval (required) for pronouncing three hundred long letters make five *Vinâḍis*. To that effect also **another Smṛti** ; "(The interval required for pronouncing) the long letters is (known as) *Prâṇa* ; six *Prâṇas* make a *Vinâḍi*". Thus, therefore, the meaning of the aforestated texts to be inferred is that the Brâḥmaṇa conversant with astronomy by pronouncing long letters should measure up the interval of five *Vinâḍis*,

1 Ch. I. 277–279.

the accused should, during that interval, remain in the balance ; during this interval the appointed umpires should make up the decision as to the innocence or guilt by means of the signs of success or defeat.

What then are the signs of success or defeat ? Anticipating this, says **Nârada** [1] : "Upon being weighed, if he increases, [2] he is undoubtedly innocent ; if (his weight remains) the same or (if it) becomes less, the man cannot be declared innocent".

As to what moreover has been stated by **Pitâmaha** : "If he becomes less, he will not be (regarded as) innocent, according
PAGE 111 to some, however, if he remains the same, he is not innocent, one who remains the same should be regarded as guilty of a petty offence, while one guilty of a great sin becomes less ", there the expression ' According to some ' is intended as evidencing respect, and not intended as indicative of innocence according to his own opinion ; for persons committing petty offences are also guilty ; therefore, there is no distinction whatsoever in the defeat of one who becomes less and one who remains the same. In regard to the punishment and the penance, however, there is a great distinction ; for punishment and penance follow (the degree of) guilt.

As for what has been stated by **Bṛhaspati** [3] : "If one who is accused becomes less in the balance, he shall be held guilty ; but if he remains even, he should be weighed again ; if he increases, he becomes successful." The meaning of that is this : The decision about the guilt of one who stands even (in the balance) is not to be made after the proceedings of the first weighment, but if when weighed again, there is still the evenness also, then the guilt should be determined upon. In the same way, in the case when the scales are broken, or such other like cases also, the guilt or innocence of one who is being weighed again must not be decided upon. To that effect also **Kâtyâyana** : "When the scales break, or the balance is broken, or the ropes also, as also when a doubt arises as to the innocence, one should again test the man".

The (subject of) doubt about the innocence, however, has been elaborated by **Nârada** : "When it is broken up in the top points of the balance, or when the level point has deviated, or when it has been shaken by the wind, or goes up or down even, or also when it suddenly slips away, then one should resort to neither (conclusion)". The meaning is

1 Ch. I. 283.

2 यदि वर्धेत Dr. Jolly translates, 'if he rises'. 3 Ch X. 19. 4 Ch. I. 284.

that when the ends of the balance have slanted sideways, as also when the the water placed for ascertaining the evenness has moved, or also when under the force of the wind the balance quivers upwards and downwards, or when it slips off from the hand of the holder of the balance, then one should not give a decision as to success or defeat.

As for what again has been stated **by him** : "Should the base burst, or the scales break, or the beams of the hooks split, or the strings burst, or the transverse beam break, the accused shall be acquitted," that also has a reference to where the cause of the breaking etc. is not visible [1], for like the ordeal, the breaking [2] up of the scales etc. is the cause of purification. Here **Pitâmaha** : "When all the umpires declare the innocence or guilt to the King, then the King surrounded by the good people, should call up the acquitted person and do him honour, and also should bring about the satisfaction of the sacrificial and the head priests by *dakṣhiṇâs*. The king causing this to be observed, after having experienced enjoyable luxuries, obtains great fame, and becomes entitled for the supreme Brahma."

Thus in the **Smṛtichandrikâ** the **procedure about the placing in the Balance.**

Now the **Procedure** about the (ordeal of) **Fire. Agnividhiḥ.**

There **Pitâmaha** : "I shall describe the procedure for the fire (ordeal) in details, as dictated in the Śâstra ; one should cause eight circles to be prepared, and the ninth in the front likewise." The meaning is that at a wellknown place as prescribed by the rules, such as a temple of god or the like, having performed the purification (ceremony) of the ground by digging and sprinkling, there the Chief Judge should prepare nine circles ending towards the east, after observing a fast, being directed by the King's command.

These, moreover, should be prepared with cowdung, as the **Same Author** has stated : "These, moreover, should be prepared by (means of) the cowdung, and should be properly sprinkled." The internal extent and measure of these both have been pointed out by **Yâjñavalkya** [3] : "A *maṇḍala* (circle) should be understood to be of sixteen *aṅgulas*, and the same should be the space intervening." The meaning

PAGE 112* is that the circles and their intervening spaces should (each) be made of the extent of sixteen fingers.

1 On p. 111. l. 17 for तदपिदृश्यमान read तदपरिदृश्य &c.

2 For शिक्यादेरशुद्धिकारणत्वात् read शिक्यादेः शुद्धिकारणत्वात् ।

3 **Book II. 106. (2).**

The presiding deities of the Maṇḍalas have been pointed out by **Pitâmaha** : "The first circle should be dedicated to the god Agni (Fire), the second has been stated to be for Varuṇa ; the third for the god Vâyu (Wind) ; the fourth to the god Yama ; the fifth for the god Indra ; the sixth is stated to be for Kubera ; the seventh to the deity Soma ; and the eighth to the Sun likewise; the ninth for all the divinities ; this is the rule known to all the experts in ordeals."

Here the Fire is worshipped, therefore, it is (designated as) 'dedicated to Agni', as a maṇḍala is not possible to be for Agni either upon the ground [1] of the oblations being offered, or because of (its so having been mentioned in) any *Sûkta.* In this manner also should be considered (the position) in regard to Maṇḍalas for Varuṇa and the others, to be by reason of their being placed there for the purpose of worship.

Therefore as in the **text** : 'Let the cup (*Chamasa*) [2] go away to the *Hotâ* etc.', by reason of the (collective)' appellation indicated in the directing mantra viz. ' The cup be for the *Hotâ*,' as the right of the *Hotâ* and the others arises, in these places, of consuming in the cup, so by reason of the appellative ' 'of the Agni, etc.,' the worship of Agni and the rest should be made in their respective places ; this is established from this very text.

Therefore, after the sprinkling of the circles (*maṇḍalas*), one should offer worship to the presiding deities of the *maṇḍalas.* Thereafter, one should throw *darbhas* with their ends towards the east ; as the **same Author**

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1 The meaning is that there is no offering of oblations prescribed in this connection, nor has any special section of the Veda directed this to be done.

2 See Jaimini III. V. 22 (in the 7th *Adhikaraṇa* and also the 8th and 9th Adhikaraṇas 23–30 Sūtras). The Sûtra reads thus चमसेषु समाख्यानात्संयोगस्य तन्निमित्तत्वात् By reason of the *Saṁkhyâ* in the case of spoons (or cups) and of the mention of the connection being for it.

In the *Jyotiṣṭoma* sacrifice is the Vedic Text प्रैतु होतुश्चमसः प्रजह्मणः प्रहोतृणं, प्रयजमानस्य. Here the position is suggested that, as there is no specific text to that effect, it does not sanction eating from the spoon. To this the answer of the *Siddhâṁtin* is that here there is a general call for the *Chamasi* (चमसी) *i. e.* those who are entitled to the use of the चमस or spoon, and thus they are collectively designated by the appellation (समाख्या) as an authoritative statement by the Âchâryas called समाख्या. By the etymology of the word also, the conclusion is that these priests are entitled to drink Soma.

Applying the rule here, the Author says that by the very fact of the समाख्याs, or appellations such as आग्नेय, वारुण &c. it is established that the several deities named should be offered worship.

has stated : " At each *maṇḍala* should be offered kuśa grass as directed in the Sâstra [4]'. To the southern direction of the first *maṇḍala* and not at a long distance, after having established a *Gṛhya* fire, one should perform the pacificatory [2] sacrifice (*S'ânti homa*), as the **same Author** has stated : " With the object of securing peace (*S'ânti*), one should offer one hundred and eight oblations of ghee into the fire".

The sacrifice. moreover, shou'd be offered with the oblation *mantra*. "To agni, the purifier, this oblation, Svâhâ,' so has been stated by the commentators.

Thereafter, in that fire, one should heat the iron ball : To that effect **Pitâmaha** : " After removing all angles and making it even, one should heat in the fire a ball of iron of eight *aṅgulas* and weighing fifty *palas* ". 'Even,' *i. e.* not low, nor high. The mention of the word *samam*, 'equally', again a second time is with the object of ordaining that one should heat it all round ; one should heat a ball of sixteen *palas* ; vide the text of **Śaṇkha and Likhita** : " Thereupon after having taken into the cavity of his hands joined together a red hot iron ball weighing sixteen *palas* and covered in seven *aśvattha* leaves, he should go seven times to the boundary line."

The heating, however, should be done by an ironsmith ; so says **Nârada** : [3] "One who is a brazier by birth, and moreover who is an expert in working with fire, and one also who has witnessed the performance elsewhere, by such a one should the iron be heated in the fire."

By the expression 'one who has witnessed the performance elsewhere', is indicated that as in the case ordinarily, for the purification of iron, when well heated it is sprinkled with water, and having been heated again, it is again thrown into the water and the heating is done again with the object of accomplishing the perfection of the iron, in the same way should be done here also.

There, while the third heating is proceding, one should perform the ceremonial common to all the ordeals, such as commencing with the invocation of Dharma, and ending with the placing of the leaf on the head. So also **Pitâmaha** : "This *mantra* ceremonial in its entirety, one should utilise in regard to all the ordeals ; and one should perform the invocation of the gods in a similar manner."

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1 नामतस्तु A 'name' or 'appellation'.

2 शान्तिहोम a sacrifice with the object of avoiding evil. शान्त्यै or शान्त्यर्थो।

3 Ch. I. 266.

no calamity is produced in regard to a son, wife, or property also, such a one should be regarded as innocent, and there is no doubt (about this)". By **Pitâmaha** has been mentioned other intervals also: "Either within three nights, or seven nights, or even two weeks also, one to whom any calamity is seen (to have happened), such a man is certainly a sinner", 'To whom' *i. e.* to the accused.

The **Same Author** says that the guilt as a sinner is inferable not only from any untoward happening to the accused himself personally, but even from an untoward happening to his kith and kin also: "Not only of himself only, but if to (any of) all his kindred occur a (calamity in the form of a) disease, fire, or the death of a kindred, that even is its indication". The meaning is that, it is not that if that *i. e.* the disease or such other untoward happening occur only to him who has swallowed the Kośa, but on the other hand, if it happens to any one among all his kindred, then also.

By **Manu** [1] also another interval has been stated: "He, moreover, to whom no misfortune happens speedily, must be held to be innocent in regard to the oaths." 'Misfortune,' *Ârtiḥ*, *i. e.* the aforestated disease etc.; 'speedily,' *i. e.* quickly; in short, in one night and the like. This interval, moreover, is in regard to oaths on veracity etc. which are decisive of petty causes, the notion about innocence (to be determined) within a short time being appropriate in such a case only, and since these have been mentioned in regard to veracity and the like oaths. The intervals of three nights and the like, however, having a reference to Kośa have been mentioned in regard to Kośa.

There also, it should be understood that the interval of three nights has a reference to an offence of a smaller degree than (where) the rice (is administered); while that with an interval of seven nights, however, to one of less degree than that for a thing in regard to a *Mahâbhiyoga* (serious charge); for one for an interval of two weeks is in reference to a *Mahâbhiyoga*; while that for an interval of three weeks, however, in regard to Kośa, dealt with in the **text** [2]: "For the loss of twenty and ten, the drinking of the Kośa has been ordained."

Having regard to appropriateness, however, in all cases, if an untowardness is seen at a time after the stated interval, the person who has (been alleged to have) committed the crime should not be subjected

1 Ch. VIII. 116. 2 Of Kâtyâyana See above pp. 195 ll. 31–32,

to a process of purgation, as the interval is quite enough, and because of the possibility of other causes leading to (the occurrence of) disease etc.

Hence also **Nârada** [1]: "After (the lapse of) two weeks, if any (event of) great calamity happen to befall any one, such a one must not again be subjected to a charge by the wise, as the appointed interval has been passed." The expression 'Two weeks' is (only) an indication (by implication) of the intervals stated before, and by the mention of the expression 'by reason of the appointed interval having been passed' it would be equally so even if it occurred during any other interval.

Thus **ends the Law about Kośa.**

Now the **Rice Ordeal.—Taṇḍulavidhiḥ.**

There **Pitâmaha**: "Now I proclaim the rule regarding the grains of rice which have been ordained to be eaten. The rice (ordeal) should be administered in a case of larceny, but on no other occasion whatsoever; this is certain." 'Other' *i. e.* in cases of adultery with women and similar other cases not involving a money claim.

In cases of disputes involving money, however, even in cases other than larceny, the rice should be administered, as **Kâtyâyana** has stated: "For a half of that, the rice," and there would be the incongruity of a contradiction with the **text.**: "Where a donation is denied" with which the passage begins. Therefore the use of the word larceny should be taken to indicate disputes relating to property.

Here the performance is (to last) for two days. There, the **Same author** states the acts to be performed on the first day: "One who has purified himself should wash the (grains of) white rice, paddy, and not of any other, and after placing (these) in an earthen pot in front of the Sun, after having mixed them with water used for the bath, one should cause it to remain there itself, having first performed the invocation etc. at night according to the rules. The meaning is that the Chief Judge having washed himself pure at night, having placed the rice in front of the sun, not at a long distance, and after having performed in entirety the preliminaries common to all ordeals, such as commencing with the invocation of Dharma and ending with the oblations, and having washed the rice as so placed with the water of the sunwash, should place it there only until the morning time.

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In the morning also, what is to be performed, that also has been pointed out by the **Same Author**: "In the morning should (it) be given three times to the party, with his face towards the east." The meaning is that the rice deposited at night should be given three times to the accused.

The **Same Author** also points out the part to be performed by the accused in the form of a repetition: "To one who is seated with his face turned towards the east, who has fasted, and who has bathed, with the parchment placed on his head, having caused him to chew the rice, he should be asked to spit thrice on a leaf." The meaning is that commencing with the sitting with the face towards the east, and ending with the spitting, all these should be caused by the Chief Judge and performed by the accused.

In regard to the leaf also, a special rule has been stated by the **Same Author**:—"Of the *bhûrja* (birch tree) only, and not of any other; if (that be) not available, (then) of the *pippala*."

This morning performance, moreover, such as chewing etc. should be done at the Sun's eclipse; so says **Bṛhaspati**: [1] "After having observed a fast at the Sun's eclipse, after having purified oneself (by a bath), one should chew the rice."

Likewise, the signs of innocence also have been stated by the **Same Author**: [2] "He is (regarded as) innocent, if the spit is white; moreover, if (it be) mixed with blood, he is guilty." The meaning of the word 'moreover', *cha*, is that not only for a mixed red is he (regarded as) 'guilty', but that even upon any other sign also. Hence also **Pitâmaha**: "He whose blood is seen (to issue forth), or whose chin or palate sink, or the limbs shake, one should pronounce him to be guilty."

Thus ends the **Law regarding the Rice (Ordeal)**.

Now **the Law about** the heated **Mâṣha.—Taptamâṣhavidhiḥ.**

There **Pitâmaha**: "I shall now state the auspicious rule of procedure for the lifting up of the heated *mâṣha*. One should cause a pot made of iron or of copper of sixteen *aṅgulas*, or a *maṇḍala* or a circle dug into the earth, of the measure of four *aṅgulas*." '*Maṇḍala*' i. e. a circular mandala i. e. in short a circle. Having filled up a pot of this sort with clarified butter or oil, or with the cow's ghee only, and having established a Laukika fire at the ordeal spot, there one should heat. For, says the **same Author also**: "One should fill it with clarified butter or oil weighing twenty *palas*; and taking up cow's ghee, one who is duly purified should heat it in the fire".

By reason of the use of the word *wâ*, 'or', here, some hold that a combination of clarified butter, oil, and cow's ghee, is intended; but that is

1 Ch. X. 25. 2 Ch. X. 28.

not correct; the rule of option being only in regard to paddy or barley on the authority of the absolute rule of the Śurti. Therefore, one should pour into the pot either clarified butter and oil, or cow's ghee of the weight of twenty *palas*, and heat it. According to both the alternatives also, while the heating is proceeding, one should observe the general procedure common to all the ordeals such as commencing with the invocation of Dharma and ending with the placing of the leaf on the head.

Thereafter, in regard to the two alternatives, there is a difference in the methods. There, first the **same Author** states the difference as regards the alternative of clarified butter and oil: "When it is heated well, he should throw a gold *mâṣha* into it. He should then lift up the heated *mâṣha* with the thumb and finger joined together; he who does not shake his fingers, or on whom no boil is produced, is deemed under the law to be pure; since his fingers were unaffected." The *mâṣha* here is the gold one, one sixteenth part of a *karṣha*, intended to exclude the silver *mâṣha* of the measure of two *kṛṣhṇalas*, as by reason of its smallness, it would be difficult to be caught up. Therefore the meaning is that one should throw either a gold or a copper *mâṣha*. 'Into it' *i. e.* in the clarified butter and oil; 'thumb and finger joined together' *i. e.* the meaning is, by the joining together of the thumb, the forefinger and the middle finger.

In regard to the alternative of heating of the cow's ghee also, the **Same Writer** states a particular rule: "He should throw into it a polished coin bearing an impression, and made either of gold, silver, copper, or iron. The pot (which had been heated to the boiling point) in which waves and circles are rolling and rising up, and which does not admit of being touched even at the nail points (of the fingers), he should test (it) by means of a green leaf (having been dipped into it), and thus producing a crisping sound; and then he should address it with the following *mantra*: 'O clarified butter, thou art the purest of all things, thou art the ambrosia at a sacrifice. Burn this man, O purifier, if he is guilty, and be as cold as ice if he be innocent'. He should (then) cause the coin lying in the clarified butter to be caught by the (accused) person who had observed a fast, had bathed, and had wet clothes on. The umpires then should examine the forefinger. He in whom no boils are seen, is to be considered innocent; otherwise, he is guilty".

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Here, the lifting up of the marked coin is by the first finger only, as the inspection has been ordained to be of that finger.

Thus **ends** the **Rule about** the **Heated Mâṣha**

Now the **Rule** about **Ploughshare.—Phâlavidhiḥ.**

There **Bṛhaspati**[1] : "Iron in weight twelve *palas* and formed (in shape) is what is called a ploughshare. It should be eight *aṅgulas* long by four *aṅgulas* broad". Having (made) in this manner, having duly thrown into the fire prepared and established at the place of the ordeal, and after the entire ceremonial common to all the ordeals had been gone into, such as commencing with the invocation of the Dharma and ending with the placing of the leaf upon the head of the accused, one should heat it well. After heating it well, however, the **Same Author**[2] states the procedure next (to be followed) : "(The Ploughshare) having been made red-hot in fire, the thief should be made to lick it once with his tongue. If he is not burnt, he obtains acquittal; otherwise, however, he loses his cause".

The use of the word 'thief' is indicative by implication, of the accused.

Thus **ends** the rule **about the Ploughshare.**

Now the **Rule** about **Dharma.—Dharmajavidhiḥ.**

There, **Pitâmaha** : "Now I shall describe the test by Dharma and Adharma. (The images of) Dharma should be caused to be made of silver, and of Adharma of lead and iron ; or one should paint (the images of) Dharma and Adharma upon a birch leaf or upon a cloth of white and black colour respectively. Having duly sprinkled with the five bovine products, one should offer worship with sandal paste and flowers ; the Dharma should have a white flower, and the Adharma shall hold a flower of black colour. Having thus established and besmeared (these), one should place the two by two balls. The two balls should be prepared either of cowdung or of clay, and should be placed nearby unobserved upon an earthern pot which had no cracks, at a pure spot which had been washed and duly smeared, in the presence of the Gods and the Brâhmaṇas. Thereafter, one should invoke, as before, the Gods and the guardians of the world; and preceded by the invocation of the Dharma, one should write the affirmation thus : 'If I am absolutely free from Sin, may (the image of) Dharma come into my hand', and thereafter immediately the accused should take hold of one; if Dharma is taken he is (declared) innocent; while if Adharma (is taken) he is (considered to be) defeated : in this manner has been briefly described the test by Dharma and Adharma."

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1 Ch. X. 28. 2 Ch. X. 29

'Lead and Iron', i. e. prepared of lead and iron combined together. Some describe as prepared of lead and prepared of iron ; 'One should place the two by two balls', *i. e.* the meaning is, that one should deposit these two in the intervening space between two balls.

The balls should be prepared with proper measurements as **Bṛhaspati** [1] has stated : "After having made of equal size, the two should be placed unobserved on a new pot". 'If I am absolutely free from sin, may Dharma come into my hand', this Mantra, the accused should pronounce; as is indicated by the pronoun 'I' in the mantra. Everything else is clear in meaning.

Thus ends the **rule about Dharma Process.**

The Chapter on **Ordeals** also is finished. The **part about evidence also is finished.**

PAGE 120* **FINAL DECISION and similar procedure-Nirṇayâdi-Kṛtyam.**

There the **Saṅgrahakâra** : "The evidence established in support of one's own case and in accordance with the modes stated, after having been duly examined by the king and the members of the Court also, the success and defeat should be determined. He who establishes his point by means of evidence, in the form of any of the varieties specified, (the point) co-eval with the recitals in the plaint, such a one is declared to be (the) successful (litigant). One who does not establish, or exhibits quite a contrary case, or one who has been found to be guilty of a vitiated cause, such a one, moreover, is (declared to be) defeated."

In this connection **Vyâsa** : " The king, however, should punish one who has been defeated, and set about doing honour to the successful (party); even if not defeated, (but) those who are obstructive to the Vedas and Sâstras should be subjected to a penalty." The honouring should be done by (offering) sandal paste, flowers, cloth etc; as the **Same Author** has stated : " The honouring of the successful (party) is stated to be by means of sandal paste, flowers, clothes, and the like."

After the starting of the honouring, states **Kâtyâyana** : " The (successful) party should be duly invested with the matter established, after being in due form felicitated, while the king should offer to him a document in his own hand." **Nârada** : " The property which was placed before the Court, whether movable or immoveable, should afterwards be caused to be delivered with the increase, to the successful party, along with a document."

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1 Ch. X. 32.

'Document', *i. e.* the document of success. To that effect also **Bṛhaspati**[1]: "When a king passes to the successful party a document containing the evidence of the first party, and of the respondent, and concluding with the final decision, that document is called a deed of success". Whatever is to be entered in a deed of success all that has been stated in the rules about documents, and that should be followed here.

Yâjñavalkya[2] states a special rule in regard to certain points (arising) in the **text**[3]: 'Should be duly invested with the matter established': "Where the defendant sets up a denial, and it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in one particular, he should be compelled by the king to pay the entire claim; he (the plaintiff) should not, however, be allowed to recover (from the defendant) what had not been alleged in the plaint." The meaning of this: Where a defendant gives a denial regarding coins, clothes, ornaments, and many other things, which were set out at the time of the plaint, and after the whole was affirmed on oath, gives an answer 'This is false,' and has been proved on the strength of evidence in regard to one point and has been made to admit thus: 'True, I had taken this,' such a one should be compelled by the king to pay to the plaintiff the whole of the claim set out in the plaint.

Thus it is not that the point set out in the plaint and afterwards iterated by the plaintiff should not be taken by the king as it was to be given. This is what comes to have been stated: "After discarding all circumvention the king should decide disputes in accordance with actual facts." What has been stated in this **text**[4] should be resorted to in a case of this kind, as the fraudulent intent is proved in this case.

It should not be said that following the rule in the case of circumvention, the compelling of the entire payment even should not be resorted to by the king. As says **Kâtyâyana**: "Where a person after having set up a denial of the entirety, afterwards admits mutually a small portion even, there the person complained against should certainly be compelled to pay the entire claim; thus holds **Bṛhaspati.**" The mention of Bṛhaspati is indicative of respect.

Nârada also wishing to point out that the compelling of the entire claim should be resorted to, states what should be paid by the person complained against: "A person against whom a claim has been made concerning several points, and who has made a denial of the entire claim,

1 Ch. VI. 4. 2 Book II. 20. 3 Kâtyâyana; see above.
4 of Yâjña. Book II. 19.

if a claim has been established as to one portion (only), (there) the entire claim as alleged must be paid."

(It may be said) Indeed, if ancient texts were to be interpreted as stated before, they would not be decisive on a point of law, for (in that case) their decisive character would be stated to be in pursuit of circumvention."

AN OBJECTION

The answer is: Yes, true: still there is no fault; as in regard to the matters stated before, a decision at law may affect adversely a decision according to Dharma. Hence also **Bṛhaspati**[1]: "Where a decision is given exclusively in pursuance of the Śâstra, it should be regarded as a decision at law; but Dharma (law) is ignored there." 'Where' *i. e.* such as in cases stated before and the like.

THE ANSWER

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As for what has been stated by **Kâtyâyana**: "Even if a complaint be in regard to several points, (still) as much as the creditor can properly substantiate by (means of) witnesses, so much property shall he get", that has a reference (to a case) where the portion which is vitiated is not entirely non-existent, for here (also) as is the case with ancient texts, the defendant does not deny everything as vitiated in entirety.

Some, however, say that this text has a reference to (the case of) a debt incurred by the father etc. and (demanded) to be paid by the son and others by saying that by reason of the fact that a threefold answer of denial, 'I do not know' is possible only in such a case; that is not correct; for, even in a dispute regarding a debt incurred by onself, a threefold answer due to forgetfulness &c. is possible. In a dispute regarding a debt incurred by the father etc. for a son stating an answer of denial, viz. 'This is false', even as much as would be regarded as known as would be established.

If, however, it be said that in the case of sons and the like, an answer such as 'this is false' itself is not possible, the answer is, do not say so; for that is possible in the case of those who were adolescent at the time when the loan was taken, as also in the case of those who were not major under the statement of a mother etc.

Now, if it be said, that the text referring to that portion only as is established, is applicable (only) to the sons etc. who declare an answer of denial by saying 'I do not know', then, confine its applicability only to those who propound a three-fold answer 'I do not know' etc., why in reference to the son etc. ?

There, in regard to the means for the worship of Dharma, the **Same Author** states a special rule : "There, the lord of men (*i. e.* the king) should cause the worship of the fire (Lit. consumer of oblations) to be performed with red sandal paste and perfumes, and with red flowers likewise". In short, of the Dharma invoked in the fire in the red, hot iron ball of the fire. Red sandal paste and perfume, (make together the compound word) 'red-sandal-paste-and-perfume' ; with these two. This rule is not in regard to the means of the worship of the god Indra and others, as it has been particularised by the word 'of the fire.'

Hârîta states the procedure to be followed by the accused after the affirmation leaf is placed on his head : "Thereafter he should stand with his face turned towards the east, and the fingers of his hands stretched forward, with wet clothes on, and also duly purified, having placed the leaf on his head." Here, moreover, he should take his stand in the *maṇḍala*, as **Pitâmaha** has stated : "He should stand in the *maṇḍala* to the west, with his face turned towards the east, and duly purified".

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Viṣhṇu [1] states what is to be done by the (person) accused as well as by the Chief Judge : "At the beginning itself, he shall mark the hands in which paddy has been crushed." (The two hands) in which paddy has been crushed, are the hands in which paddy has been crushed. By this it comes to be stated as of course that the accused should crush the paddy with his hands and stand with the fingers of his hands stretched out. The meaning of the expression 'shall mark', has been elaborated by **Nârada** [2] : "He shall carefully mark the signs on both his hands, which were made before and were (lying) hidden, with scars and without scars also". The meaning is that with the object of marking those which existed before the holding of the fire, he should make signs like the swan's feet by means of the red lac die at the scarred spots in the two hands of the accused. So also the **Same Author** says : "At all the scars on both the hands, he should make the marks of a swan's feet".

Yâjñavalkya [3] states the performance at the next stage: "After having marked the hands in which rice paddy had been rubbed, thereafter one should place leaves of *aśvattha*, and as many (rounds of) thread should he coil around". **Viṣhṇu** [4] also : "Thereupon, he should place seven leaves of the *aśvattha* tree in the hands, stretched out, of the person with his face turned towards the east. These, moreover, together with both (his) hands,

1 Ch. XI. 10. 2 Ch. I. 301. 3 Book II. 103. 4 Ch. XI. 3-4.

he should circle round with a thread". By the use of the word *tataḥ*, 'thereafter', at both places, this appears to be conveyed : viz. according to this view, the offering of oblations etc. which has been stated in other *smṛtis* to be performed in the interval between the marking of the hands, and the placing of the leaves, that should not be done.

Thus, moreover, what has been stated by **Nârada**, viz. : "In this manner, having done the marking of the hands of the accused, one should offer oblations of ghee into the fire with (the recitation of) mantras with the purpose of securing peace. When the Gods and the guardian deities of the regions have been appeased, he should turn his face towards the sun, and pronounce loudly this mantra. 'O Fire, thou movest in the inside of all beings and art witness ; thou carriest the oblations to the gods, and when oblations are offered to you, you bestow peace. Whatever (be the) sinful or meritorious acts of men which lie hidden, thou alone knowest O God, which mortals do not know. Since, I who have been accused at law am placed under a suspicion, be pleased to free me according to Dharma.' While he is addressing in this way, the hands of him the intelligent one, should be covered with seven even leaves of *aśvattha*". The meaning is : 'with mantras', *i. e.* such as '*A Kṛṣhṇena rajasâ*' etc. (with black dust etc.), with nine mantras, bringing out the planets, 'the Gods', such as the Vasus, Âdityas, and Rudras, and also the guardian deities of the quarters, when appeased with the oblations of ghee offered in their respective names ; all that should be regarded as optional.

As for the characterisation stated of the leaf viz. 'even', that is always applicable. Thus, in the case of both alternatives, the leaves should be of even size. Likewise, in regard to the encircling thread also, a special rule has been stated by the **Same Author** : "He should encircle both hands with seven white thread yarns". 'White', *i. e.* of white colour.

As for what has been stated in **Another Smṛti** : "When carrying the red hot iron in both his hands covered with seven *arka* leaves, and if unburnt at the seventh step, he is (regarded as) innocent", that has a reference when the *aśvattha* leaves are not available. As says **Pitâmaha** : "From the *pippala* is the fire produced, *pippala* has been declared to be the king of trees ; therefore, a wise man should place its leaves on the two hands". The meaning is that *Aśvattha* is so highly praised, therefore its leaves only should be taken as far as possible. The *Śamî* leaves have also been added to the leaves stated before. To that effect **another Smṛti** : "Seven *pippala* leaves, or the *śamî* leaves similarly ; of the *dûrvâ*, seven

leaves, and rice besmeared with curds, one should place". Likewise one should place flowers also, as **Pitâmaha** has stated : "Seven *pippala*, whole rice grains, flowers and curds".

Thereafter, when the iron ball is heated, the Chief Judge should respectfully address the fire in the iron ball with the mantra commencing with " O fire, thou art the Gods" etc. and ending with "O great Fire." To that effect **Pitâmaha**: " When it has been heated, thereafter, being duly purified, one should invoke the fire, after, however, having performed the invocation of the Gods in accordance with the rules :

PAGE 114* ' O fire, thou art the four gods, thou art also offered oblations at the sacrifices, thou art the mouth of the Gods, thou art the mouth of the philosophers. Being in the womb of all beings, thou knowest all their good and bad deeds ; since thou purifiest the sins, thou art called the purifier. In the case of sinners, O Fire, exhibit thyself, appear in flames, O thou holy purifier; while to those who are pure in thought, be cool, O great Fire."

The mention of the invocation of the gods, such as Dharma and the rest, is only an extended application of the ritual commencing with the invocation and ending with the purification of the hand of the accused, and the placing of the flower. **Vishṇu**[1], however, states another mantra in the form of an address to the fire in the iron ball : " Thou, O Fire, dwellest in the interior of all created beings like a witness. O Fire, thou knowest what mortals do not comprehend. This man being arraigned in a cause, desires to be cleared from guilt. Therefore mayest thou deliver him from this doubt according to law." This mantra in the form of an address is to be used in entirety, and not by alternatives, the object begged for, being particularly concentrated in the person of the accused having to be separately achieved in the open.

As for the invocation in the text of **Nârada**[2] viz. : "When it has been heated at the third heating, a pure Brâhmaṇa who reveres the truth, and is foremost amongst the *sabhyas*, should address it as follows: 'Listen to the law of Manu, which is superintended by the guardian deities of the world. Thou, O Fire, art the means of purification and the exalted mouth of all the gods. Thou, dwelling in the heart of all beings, knowest this affair; Truth and falsehood proceed from thy tongue. Deign not to show thyself unworthy of the character thus attributed to thee in the Vedas and other books. This man (the defendent) has been thus charged by the other

1 Ch. XI. 11, 12. 2 Ch. I. 289–294.

man (the plaintiff), and has denied the charge (declaring) 'I will hold the fire, so as to show that it is all untrue.' Thus confining in truth, this man is holding thee. Therefore, O Fire, be cool for him, if he is speaking the truth. If, however, he be telling a lie, as a sinner, burn his hands'' has been stated as the invocatory address, that alternates optionally with the invocatory address stated by **Vishṇu** and **Pitâmaha** as having the same sense.

When the invocation is made as stated by **Nârada**, then the **Same Author** states the procedure to be followed after the invocation: "This prayer having been carefully written on a leaf and recited, he should fasten the leaf on his hand, and after having done so, should then give him the iron ball." The meaning is that after having made him carefully listen to the import of the aforestated invocatory prayer, as also the meaning of the *mantra* stated on the leaf which was placed on his head, and after depositing the leaf in its proper place, the iron ball should be given (into his hands).

When, however, the invocatory prayer is made as stated by **Vishṇu** and **Pitâmaha**, then after that is offered, **Pitâmaha** states the procedure: "Thereafter, taking it up, the King intensively devoted to Dharma, by means of a prong, should place it in his hands, or one appointed." The order of words is that 'having taken up the iron by means of a prong,' "One appointed" *i. e.* the Chief Judge.

Yâjñavalkya[2] states the procedure to be observed before the placing in the case of both alternatives: "O Fire, thou pervadest the innermost parts of all created beings, you are the purifier. O omniscient, declare like a witness the truth about me from my virtues and sins." After he has addressed in this manner, he should place in both his hands a smoothened ball of iron weighing fifty *palas* and (made) redhot by fire.' 'While he has addressed in this manner,' *i. e.* while he was making the invocation of the fire as aforestated; 'of his' *i. e.* of the accused.

The **Same Author**[3] states the procedure to be observed by the accused after the iron ball is placed: "He having taken it (into his hands) should slowly walk through the seven *maṇḍalas*." Its meaning has been expounded by **Vishṇu**[4]: "That man after having taken it, should proceed through the (seven) circles putting his steps not too hurriedly, nor lingeringly either."

"Through the Circles" *i. e.* the meaning is, commencing with the second and ending with the eighth. To that effect also **Nârada**: "Having taken it up in both his hands, when addressed by the Chief Judge, and having

1 Ch. I. 295. 2 Book II. 104–105. 3 Book II. 106. 4 Ch. XI.

stood in one, from there he should proceed to the other seven, in a straight manner. Without being confused, he should go slowly
PAGE 115* unprovoked by the fire, should not let fall without reaching (the point of) the ground which was fixed upon; he should not go beyond the *maṇḍalas*, nor should he place his foot on this side; and having gone through the eighth *maṇḍala*, the man should let the fire go from there." 'In one," i. e. in the first *maṇḍala*; 'from there, others' i. e. the second and the following. The letting down of the fire, moreover, should be done in the ninth maṇḍala, as **Pitâmaha** has stated: "After having gone to the eighth *maṇḍala*, a wise man should throw (it) down in the ninth."

After the placing down, **Nârada** states what is to be done by the umpire: "He should make an examination of the hands of him who has left off the ball", *i. e.* the implication is, with a view to ascertain the innocence or guilt.

There, the **Same Author** mentions those signs which are indicative of innocence: "In the signs observed before, there, one should mark others also. If another circle of red colour caused by the fire (is seen), such a one should be regarded as impure, and deeply immersed in the path of untruth." The meaning is that one in both of whose hands is observable any tumour or the like (mark) caused at any place, one should know such a one to be unpurgated. One, moreover, in whom none such is found, such a one should be known to be innocent.

To that effect also **Viṣhṇu** [1]: "One whose hands are burnt even so little, shall be deemed guilty, but if he remains wholly unburnt that man is freed from the charge".

When, however, there is a doubt whether he is burnt or not burnt, there says **Nârada** [2]: "If it cannot be determined whether the hands are burnt or not, one should give him paddy rice to be crushed with all his might seven times. The grains having been crushed by him, if he is declared in this way to be unburnt by the members of the Court, he shall honourably be let off as (being) innocent; if he is burnt, he shall be punished in due order".

Pitâmaha also: "When it was carried, thereafter, one should rub paddy rice or barley; if to the end of the day there be no disfiguration, one should declare him to be innocent". The meaning is that when both the hands are without any disfiguration, one should declare him to be innocent. Some read as 'When both the hands are without any

1 Ch. XI. 8. 2 Ch. I. 302, 303.

disfiguration'. According to their opinion, immediately after the carrying, the innocence should be determined.

An Objection. It may be said, indeed if the reading viz. 'at the end of the day, he should be declared to be innocent' be adopted, there would be a contradiction with the text of **Yâjñavalkya**[1] : "After he has thrown away the (ball of) fire, and rubbed his hands with rice, if he (is found to) be unburnt he should obtain an acquittal". (The Answer is). Do not say so.

For as is the case with the rule "After taking away, he offers the *paridhis*[2] as oblations into the fire", the gerundial termination is possible even if there be no close contiguity.

As for what has been stated by **that Author**[3] viz.: "If the ball falls down in the way, or in the case of a doubt, he should carry it again", that has a reference where the doubt is not dispelled, even when the paddy rice have been rubbed, or in reference to a state of doubt as to whether the non-burning or burning will be the result of truth or falsehood, or whether these resulted owing to attention or inattention as to the visible mark.

In the **text** : 'If the ball falls down in the way', should be understood as implied', the **text** : 'And if he is not found to have been burnt'. For, if he is found to be burnt, the want of innocence having been determined, there would be no room for carrying again. Hence also **Nârada**[4] : "He, however, who lets it fall in the midway, and is not found to have been burnt, he should be made to carry the fire again ; this has been fixed as an established rule'. 'And is not found to have been burnt' *i. e.* in the cavity of the two hands, is to be understood.

If he is found to be burnt at any other part, even then he should certainly be made to carry again. To that effect also **Kâtyâyana** : "If the accused person slips off, or is burnt at any other than the (proper) place, the gods do not regard him as burnt ; to such a one it should be administered again also". 'Again also' *i. e.* even once more.

In this connection **Nârada**[5] : "Adopting this procedure, should the ordeal by fire be administered at all times, has it been stated otherwise than in summer and during very cold season".

Thus **ends** the **procedure about the (ordeal of) Fire.**

1 Book II. 107 (1).

2 परिधि Those are the three pieces of twigs placed on the three sides of the altar excepting the east ; they are taken from the *Śamî, Pippala* or the *Udambara* tree.

3 Book II. 107 (2). 4 Ch. I. 298. 5 Ch. I. 300.

Now, as (the ordeals of) Water and Poison have been given up to be administered, without mentioning the procedure therefor,
PAGE 116* the **procedure for** (the ordeal of) *Kośa* is being described.

Kośavidhiḥ.

There **Yâjñavalkya** [1] : "Having worshipped the stern deities, he should collect the water in which they were bathed." 'Stern deities,' such as Rudra, Durgâ, Âditya, and the like.

The meaning is, that the Chief Judge after having observed a fast, having duly worshipped any of these with the sandal paste, rice grains, etc. and after having bathed (it), then he should carry that water of its bath to the place of the ordeal. Having posted the man there, and after having performed the procedure common to all the ordeals viz. commencing with the invocation of Dharma and ending with the placing of the leaf upon the head of the accused, and turning the accused with his face towards the east, he should make him drink three handfuls from the water as prepared before. A *maṇḍala* for three handfuls, moreover, should be made at that very time with cowdung, so has been stated by the commentators. Having made him (stand) facing the sun, and after making him hear, one should make him drink. To that effect **Yâjñavalkya** [1] : "Thereafter, making him hear (the *mantra*) he should make him drink from that water three handfuls".

What should (he) be made to hear? Anticipating this question, **Nârada** says : "And after making him hear the offence (with which he is charged) he should be made to drink three handfuls." 'Offence' *i. e.* the sin. That meaning has been set out in the form of the result (arising) therefrom, by the **Same Author** : "If any man when accused (of an offence) drinks by his own volition the Kośa, or speaks falsely through covetousness, that wicked one is regarded as fraudulent [2]. If one actuated by one's own desire drinks the Kośa and speaks falsely, he is born a pauper, is affected by disease, and a fool for seven births. Indeed, he who forcibly administers Kośa, and expects his own benefit, that would be ruin to him, and his cause also will not succeed". Here, the last verse should be recited to the prosecutor, by reason of appositeness [3].

The accused, however, having heard the recital (of the test) should declare that this was not done intentionally', and drink ; To that effect **Viṣhṇu** [4] :

1 Book II. 112. 2 छलीभवति—He comes to be regarded as a **villain.**
3 सामर्थ्यात् *i. e.* as it fits in with the context. 4 Ch. XIV. 2–3.

"Having invoked the terrible deities, from the water of their bath should be drunk three handfuls of water, uttering at the same time the words, 'I have not done this intentionally', with his face turned towards the deity (invoked)".

In this way, it may happen that the Kośa may be administered by bringing in the bathwater of any deity whatsoever : So **Pitâmaha** states a regulating rule : "Of that deity whose devotee he is, the water should be drunk by him. In the case of an equal regard for all the deities, that of Âditya should be given to be drunk. The water of Durgâ should be given to the thieves, as also to those who make a living upon their weapons. The water which is of the (resplendent) Sun, a Brâḥmaṇa must not be made to drink that".

Thereafter, the **Same Author** states the rule regarding the part to be bathed: "Of Durgâ, one should cause the tridant to be bathed, while of Âditya, the circle; while of the other deities also, the weapons should be bathed".

After the drinking of three handfuls says **Kâtyâyana :** "Now, if a calamity through fate occurs within three weeks, the accused should be compelled to pay the amount, and a fine also". 'Calamity through fate' *i. e.* the appearance of a disease caused through divine agencies.

The diseases caused by divine sources have been pointed out by the **Same Author :** "A wasting acute diarrhœa, erruptions, pain in the palate and bones, an eye disease, a throat disease also, and delirium is caused; headache, and the bursting of the arms also ; these are divine diseases for men".

Other causes also, indicative of a defeat, have been pointed out by **Viṣḥṇu** [2] : "He to whom happens within two weeks, or three weeks, an illness, or fire, or the death of a relative, or a heavy visitation by the king, one should know such a one to be guilty ; if otherwise, (to be) innocent".

By **Nârada** [3] have been mentioned (the signs of) a defeat, such as destruction of property and the like : "If within a week, or also within two weeks, occur to him any disease, (loss from) fire, death of a relative, destruction of property, or extinction of wealth, to himself personally one should infer from it his defeat". To himself, personally ; *i. e.* not along with a group. The word 'property' (*artha*), here, is intended to indicate sons and the like ; otherwise, the word 'wealth' (*dhana*), would be meaningless. Hence also **Bṛhaspati** [4] : "If within a week, or within two weeks, one to whom

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1 मत्या Dr. Jolly's edition, it appears reads मया as he translates. 'I have' and does not mention intentionally.

2 Ch XIV. 4–5. 3 Ch. I. 330. 4 Ch. X. 24.

Again, if it be said that having regard to the **text**:[1] "A debt should be paid by the sons and grandsons; in case of a denial, when established by witnesses," it has a reference to (a proceeding against) the sons etc., then it would have a reference to the sons who say 'This is false,' as the text says 'in case of a denial, when established by evidence.'

Others, however, explain the adjustment in another way: The text, laying down that the entire claim should be compelled to be paid, is applicable where the claimant establishes his claim in regard to one only out of the many affirmed (by him), only to a case, where a party sets up a denial and (further) boastfully declared that 'even if the plaintiff establishes one of the several claims affirmed by him, I shall pay up all the claims,'; but without that, however, it applies to such only as may have been established.

This also is not proper. Since the **text**[2]: 'Where the defendant sets up a denial, and it is not confined to one only' has been stated without any particularisation. Nor, moreover, would it be proper to say that as this text has a reference, prominently to circumvention, the reference to the emphatic assertion is only in confirmatory establishment of that test, because as the conclusive decision of the trial after taking up the circumvention in the form of a universal denial, the taking up of the element of circumvention is established in regard to so much portion of the text. If the compulsory payment of the entire claim be by the force of the complaint itself, the **text**[2] 'sets up a denial' &c. is only repetitionary and the two texts also may (be regarded as) of the same import.

Nor, however, would it be proper to say that this is resorted to in this way as a modification of the text of **Kâtyâyana** viz: "Even in a complaint covering several counts, so much as the creditor shall establish", as its opposition is taken away by a straight way. Thus enough of too much elaboration of other opinions and their refutation.

The mode of compelling payment, however, has been pointed out by **Kâtyâyana**: "The king should bring about repayment by a Brâhmaṇa by conciliation only; while by others in accordance with the ways of the country; he should compell the wicked by force to pay; a coparcener or a friend also, he should cause to pay by circumvention only".

Not only should the king compel rendition to the owner, but he should exact a fine for himself also. So says **Nârada**[3]: "A debtor, who however, although rich, does not offer to pay out, he shall be compelled by

1 of Yâjñ. Book II. 50. 2 Book II. 20. 3 Ch. I. 132.

the King to pay after taking a twentieth part (for himself)". The meaning is that as much as may come to be the twentieth part of the amount to be paid, so much amount should be taken from the debtor. This also has a reference where the debtor has admitted.

In the case, however, of a debtor who had not admitted, **Viṣhṇu** [1] says : "If a creditor approaches the King, the debtor against whom the claim has been established by him, should pay to the King a tenth part of the amount as penalty ; the creditor also who has secured the amount should pay the twentieth portion". The payment is by way of a fee for this amount being secured and not as a penalty, as he was not at fault.

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When a debtor approaches the King, then says **Manu** [2] : "The (debtor) who complains to the King that his creditor recovers (the debt) independently (of the court), shall be compelled by the King to pay (to him as a fine) one quarter (of the sum), and to his (creditor) the money (due)". The meaning is, that a debtor being a favourite of the King, with the intention of causing an obstruction by his order, complains to the King about a creditor who was making recovery of the loaned amount by a demand independently by himself, *i. e.* makes a complaint that 'he is troubling me', such a one should be compelled by the King to pay as a penalty, an amount equal to a forth part (of the sum).

As for what has been stated by the **Same Author** [3] :—"As much of the amount as one (i. e. the defendant) falsely denies, as also as much as one (i. e. the plaintiff) falsely declares, these two (thereby) offending against justice, should be compelled by the King to pay double the amount as penalty", that has a reference to a debtor and a creditor where money had been recovered ; as it has been stated in the commentary [4] on it, 'since the expression used is 'offending against justice' *adharmajñagrahaṇât.*

As to what has been stated by **Yâjñavalkya** [5] : "When upon a denial a claim is proved (against the defendant), he should pay the amount (to the plaintiff), and also an equal amount to the King". that has a reference to a debtor from whom recovery has been made, but who has not money enough for the amount pronounced as penalty, otherwise a contradiction with the aforestated texts of **Manu** and **Viṣhṇu** would be unavoidable.

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1 Ch. II. 20-21. 2 Ch. VIII. 176. 3 Ch. VIII. 59.

4 Of Medhâtithi See p 587. l. 27. अधर्मज्ञग्रहणाच्च लिंगान्निश्चितछलविषयोऽयं वृद्धः इत्युक्तम्.

5 **Book II. 11.**

For one, however, who files a false complaint, the penalty is not equal to the amount (only), even if he has not sufficient money; as says the **Same Author** [1]. "One setting up a false claim should bear double the amount claimed". 'Claimed' i. e. double the amount of the claim : 'Should bear' i. e. should pay to the King. In the absence of that, however, the alternative course stated in the **text** [2]. "Should redeem himself from indebtedness by labour", should be followed.

As for what has been stated by **Nârada** viz. : "One must not lodge a false complaint ; a sin attaches to a false complainant ; the penalty which has been stated there, the same shall fall upon the complainant", that has a reference where a penalty has not been stated for each title (at law), as it is (a rule of) general law. Therefore it should be understood that the penalty which has been declared by **Vishṇu** for a misconducting claimant in a plea of denial, the same should be stated for a well-behaving party in regard a false complaint.

Accordingly " After a denial, when the disputant himself admits (the claim), that should be regarded as an admission, the penalty for that has been stated to be half", in this **text** the penalty which has been stated by **Vyâsa**, that itself should be understood to be also in the case of a false complaint even when he himself admits it as such.

As for what has been stated by **Manu** [3] : "Where however, a debt is denied by one, but is properly proved by (good) evidence, he (*i. e.* the King) shall order the amount to be paid to the creditor, and a small fine according to (his) capacity", that has been explained in its commentary as having a reference to a well-conducted debtor unable to pay to the extent of a tenth portion, by way of penalty. By saying 'by evidence' the author points out that in a trial of two parts (only), merely the amount should (be ordered to) be paid, and not a penalty, there being an absence of a denial or a false charge in such a case.

In the same way also, in a trial with four parts also, where the charge is founded on suspicion, or the answer pleads ignorance or the like circumstances, by reason of (the fact that there is) an absence of a false averment or a denial, an absence of penalty should be inferred.

As for what is stated in **another Smṛti** : "But if it be in the first, a quarter of a fine ; in the second a half; in the third, less by a quarter; (and) if in the fourth part, he incurs the entire penalty", that has been explained

1 Book II. 11. 2 Of Manu Ch. IX. 229. 3 Ch. VIII. 151.

in detail by the revered **Viśvarûpa** as unauthoritative by reason of its being inconsistent. Hence, the penalty (incurred) by reason of a denial or a false accusation should be taken only in a trial with four parts, where there exists a good cause as its reason. In such a case, in regard to a suit involving the payment of a debt as the subject-matter, the subject of penalty has been pointed out; in regard, however, to suits relating to deposits and the like, special kinds of penalty will he stated on the respective occasions.

As for what has been stated by **Kâtyâyana**: "He should ask the (person found to be) innocent to pay half of a hundred; the guilty shall (have to) pay a penalty", that is in regard to a person who has been found to be innocent or guilty in any particular (kind of) ordeal; since immediately thereafter, the **Same Author** says: "In an ordeal by poison, water, fire, balance, Kośa, as also rice, and in the ordeal of a heated *Mâṣha*, he (the king) should prescribe a penalty in respective order viz., a thousand, six hundred, five hundred likewise, four, three, two and one (hundred) also; a smaller amount in the case of (ordeals of) small (importance)".

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Moreover, this penalty attached to an ordeal is in addition to the penalty consequent upon a denial or a false accusation or of either, on account of the combination of causes. A wager, however, is added to the penalty prescribed in the *S'âstra*; so says **Yâjñavalkya** [1]: "If a dispute is accompanied by a wager, then in such a case, the defeated party should be made to pay a penalty, and the amount of his wager (to the King); and also the amount (in dispute) to the creditor". **Nârada** [2] also: "In a law suit attended by a wager, he of the two who is defeated must pay (the amount of) his wager, and a penalty when his defeat has been decided upon". In this respect **Kâtyâyana**: "In this manner, occupying the seat of justice with [3] evenness also and without taking side in the dispute, the decision in the suits should be made with the Brâḥmaṇas, and not otherwise". **Bṛhaspati** also: "By the King should be made with effort the investigation

1 Book II. 18.

2 Intr. I. 5. According to Asahâya, the wager must not be laid until the answer has been received. It may be laid by either party. It is not clear to whom the sum stated is to be paid. According to Burmese law, 10% of the sum staked should go to the Judge and to the pleader, and the remainder to the victorious party, See Richardson's Dhamma. p. 73. (Jolly).

3 V. L. समनैव विवादिना.

of a doubtful matter ; three in such a case, are exalted ; the loss is caused to one ; the successful party obtains wealth, and honour ; the defeated party, penalty and restraint ; the King acquires success, donation, and descipline, and other members of the court acquire religious merit". **Nârada** [1] also : "Thus a King, constantly trying lawsuits with attention will acquire widespread and brilliant renown in this life, and the abode of Indra after death". **Bṛhaspati** [2] also : "The King thus, acting according to the dictates of *S'âstra* in deciding suits, spreads his fame far and wide in this world, and becomes a minister of the great Indra. By reaching the decision in a cause according to the evidence of witnesses, documents, and inferential reasoning, the King spreads his fame far and wide in this world, and reaches the abode of *Bradhna*". **Manu** [3] also : "By subduing, however, the feelings of love and anger, (the King) who dscides a cause according to law, (the hearts of) his subjects turn towards him, as the rivers (do) to the ocean. That King of men, however, who in his folly decides suits unjustly, in no time would the enemies of that evil person bring him under subjugation".

Thus in the **Smṛtichandrikâ. the final decision etc.**

Now some **texts** relating to the subject of **Penalty** are being stated **Daṇḍaviṣhayâṇi.**

There **Nârada** [4] : "Corporal punishment and fine; thus punishment is pronounced to be two-fold. Corporal punishment begins with (bodily) beating and the like, and ends with death (sentence). The (punishment of) fine begins with a *Kâkiṇi*, ending with one's entire property". Here, the varieties of corporal punishment, it is possible to enumerate; not the kinds of punishment of fine ; as says the **Same Author** : "Corporal punishment has again been declared to be of ten varieties ; while punishments of fines are of various kinds". The expression 'of ten varieties', is not intended as restrictive of the number, since corporal punishments of various kinds are to be stated hereafter.

For, of nine varieties has been pointed out to be the corporal punishment by **Manu** : "**Manu** [5], the son of the self-existent has named ten places (for) punishment ; (these are), the organ, the belly, the tongue, the two hands, and fifthly the two feet, the eye, the nose,

1 Intr. I. 74. 2 Ch. II. 38. 3 Ch. VIII 174, 175.
4 Misc, 53, 54. 5 Ch. VIII. 124, 125

the two ears, the property and the body likewise
PAGE 124* also". 'The organ', *i. e.* the male and the female genetive organ; the restraint of that *i. e.* for having a prohibited sexual intercourse; in the case of theft, however, by a prohibition of eating and the like, the restraint of the stomach; in the case of abuse, (restraint) of the tongue; in the case of assault, of the hands; for kicking etc., of the feet; for prying into a secreted thing, the eyes; for inhaling the fragrance of the smear on the breast of another's wife, of the nose; for listening to the king's (secret) counsel, of the ears. For offering a bribe of money and the like, by a prohibition of transactions; in the case of a *mahâpâtaka* and the like, of the body. This restraining of the organ etc. should be made where a particular punishment has not been stated for the Kṣhatriya, Vaiśya, and Śûdras, in cases of prohibited intercourse, theft etc. and like offences; as in the **text** [1]: "These may be (ordered) in the cases of (the members of) the three Varṇas; a Brâḥmaṇa shall go unhurt", these having been generally stated in regard to the Kṣhatriya and the others. 'A Brâḥmaṇa unhurt' *i. e.* the meaning is that a Brâḥmaṇa not punished in regard to the places of punishment as stated before.

By saying that 'he shall go', the Author points out that the negation of punishment in the aforestated parts is only in regard to the Brâḥmaṇa who goes to another country after he was expelled, and not in the case of all Brâḥmaṇas whatsoever. Hence also has been stated by the **Same Author** [2] in the form of a special procedure in regard to expulsion: "He should never, on any account, slay a Brâḥmaṇa, though he may have committed all (kinds of) sins; he should banish him from the kingdom, leaving all his property (to him), and (his body) unhurt".

For one, however, for whom there is no (punishment of) banishment, the punishment shall be just as in the case of the Kṣhatriyas and the others. For, the **Same Author** [3] also says: "On the (members of the) four *varṇas*, who do not perform an expiation, he (*i. e.* the King) should inflict corporal punishment and fines in accordance with law".

As for what has been stated by **Gautama** [4]: "No corporal punishment for a Brâḥmaṇa", that is intended as a prohibition against a death (sentence), or destruction of an organ, and not also against the restraint of an organ. If it were so, there would be a contradiction with the afore-

1 Ch. VIII. 124. 2 Ch. VIII, 380. 3 Ch. IX, 236.
4 Ch. XII. 46.

stated text ; hence also has it been particularised by **Bṛhaspati** [1] : "Even if convicted of a *Mahâpâtaka* a Brâḥmaṇa shall not be sentenced to death". **Hârîta** also : "Wise men do not prescribe the destruction of a limb (in the case) of a Brâḥmaṇa."

In this way, therefore, it should be construed that the corporal punishment for a Vipra shall only be in the form of the restraint of an organ, and not one involving death (sentence). Hence also **Âpastamba** [2] : "For a Brâḥmaṇa, the obstruction of the eyesight". The obstruction of the eyes is to be done by tying (a cloth), and not by uprooting the receptacle, as destruction of a limb has been prohibited.

As for what has been stated by **Śaṅkha** : "For the members of the three *varṇas*, deprivation of property, sentence of death, and imprisonment;' banishment and branding with a mark for a Brâḥmaṇa," that is in regard to a poor Brâḥmaṇa. So also in regard to a Brâḥmaṇa, **Gautama** [3] : "Depriving him of his functional duty, proclaiming his crime, banishment, and branding, for one not in his element". 'Not in his element' *i. e.* moneyless. This is in regard to the (offences characterised as the) most heinous crimes.

In regard to the denial of a debt liability and the like, however, says **Manu** [4] : "But a Kṣhatriya, a Vaiśya, and a Śûdra, who are unable to pay a fine, shall discharge the debt by labour ; a Vipra shall redeem slowly and slowly (by instalments)". In the case of those who are unable to do labour work, says **Kâtyâyana** : "Upon knowing that the debtor is unable to return the debt, the king shall make him do work (for the creditor) by making him over to him ; if he is unable (to do work) he should be entered in the prison house, excepting a Brâḥmaṇa". **Manu** [5] also : "On women, infants, men with disordered mind, the poor, and the sick, the king shall inflict punishment with a whip, a cane, or a rope and the like".

In this way, moreover, (corporal punishments) should be known to be five, viz. in the form of fettering, branding, compelling work to be done, entering in a prison house, and beating. Therefore, it should be borne in mind that the statement 'The corporal (punishment) is tenfold', is indicative (only), and not restrictive. The statement, that 'Punishment, however, has been stated to be of two varieties', is also indicative ; as other varieties have been

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1 Ch. XVII. 4. 2 Dh. S. II. 10, 17. 3 Ch. XII. 47.
4 Ch IX. 229. 5 Ch. IX. 230

stated. Accordingly [1], "shaving of the head, banishment from the town, branding on the forehead with a mark of the crime of which he was convicted, and expulsion after parading on an ass, shall be his punishments". 'His' *i. e.* of a Brâḥmaṇa, as Brâḥmaṇa is under discussion here.

In this connection, **Yâjñavalkya** [2] states the punishment of shaving in the place of killing : "For a Brâḥmaṇa, not the capital punishment, (but) shaving, expulsion from the town, branding on the forehand with the mark of the crime of which he was convicted, and parading on a donkey also".

Thus, for a Kṣhatriya and the others, capital punishments only, and shaving ; as it has not been stated there as a substitute. Hence also **Manu** [3] : "Shaving of the head has been ordained for a Brâḥmaṇa as a (substitute for) capital punishment, but others may suffer capital punishment"; *i. e.* the implication is, in regard to the most heinous offences. To that effect also **Nârada** [4] : "Capital punishment, confiscation of the entire property, banishment from the town, and branding, as well as amputation of the offending limb, are (declared to be) the punishments for a Sâhasa of the highest degree. This law of punishment has been declared in the Smṛtis for all (men), excepting a capital punishment for a Brâḥmaṇa ; a Brâḥmaṇa must not be sentenced to be killed". The expression 'excepting capital punishment' is implicative of the amputation for a Vipra : "The wise never declare the destruction of a limb for a Vipra. by reason of his austerities as also on account of sacrifices, a Brâḥmaṇa is always respected", vide this text of **Hârîta.**

Manu [5], however, states a reason for excluding the capital punishment : "No greater crime is known anywhere than slaying a Brâḥmaṇa ; a king, therefore, must not even conceive in his mind the thought of killing him". Therefore, although convicted of a *Mahâpâtaka* of the most serious crime, a Brâḥmaṇa must not be killed; so says **Bṛhaspati** [6] ", "A Brâḥmaṇa although convicted of *Mahâpâtaka* shall not suffer capital punishment".

What then ? Anticipating this question, immediately after has been stated by the **Same Author** [7] : "The King may banish him, and cause him to be branded and shaved". The banishment here is from the country, and not from the town (only). As says **Baudhâyana** [8] : "After having caused to be impressed with heated iron on his forehead the mark of the crime, banishment from the realm", *i. e* he should order, is the implication.

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1 of Nârada ; Ch. XIV. 9.
2 Not found in Yâjñavalkya ; but see Nârada Ch. XIV. 10.
3 Ch. VIII. 379. 4 Ch. XIV. 8-9. 5 Ch. VIII. 381.
6 Ch. XXVII. 11. 7 Ch. XXVII. 11 (2). 8 Dh. S. I. 10, 18, 19.

In regard to the branding, however, a special rule has been stated by **Nârada** [1] : "For violating a guru's bed, the mark of the female organ shall be impressed; for drinking Surâ, the sign of a tavern ; for theft, however, a dog's foot should be impresssd; and for killing a Brâḥmaṇa, a headless trunk".

This branding, moreover, should not be done in the case of the Kṣhatriyas and the others, as says **Uśanâḥ** : "In cases of crimes of four varieties by a Brâḥmaṇa, the branding has been ordained, viz. for violating the guru's bed, drinking Surâ, theft, and killing a Brâḥmaṇa ; in the case of (the members of) the other *varṇas*, however, branding should not be caused in such cases".

What then should be the punishment ? Anticipating this question, says **Bṛhaspati** [2] : "Those who are convicted of a very serious crime, the King should sentence with the capital punishment".

When, however, it is not possible to restrain persons guilty of serious crime by inflicting a capital punishment, then states **Manu** [3] : "But when he cannot bring these under restraint by a capital punishment even, then he may utilise all these four in his case". What are these four ? Anticipating this, says **Yâjñavalkya** [4] : "A verbal admonition, a reproof, then the fine, and after that the corporal punishment; these may be utilised separately or together, according to the nature of the crime".

PAGE 126* 'Abuse', containing rough oaths ; 'a reproof', punishment with (the exclamation) *Dhik*, *i. e.* administering a reproof with the exclamation 'Fie'.

Manu [5] states the order of the administration of all these : "He should first begin by gentle admonition orally ; thereafter by (harsh) reproof ; the third, however, a fine; and after that, the corporal punishment".

In regard to the administering of these separately, **Bṛhaspati** [6] states a rule of adjustment thus : "For a petty offence, admonition by word of mouth; the punishment by a severe reproof in the case of a *Pûrva Sâhasa* ; for the middling, however, the punishment of a fine; and for treason against the King, putting in fetters, banishment, or even capital punishment should be administered by one wishing for his own benefit ; these severally or all together (should be administered) for one who has been found to have perpetrated a heinous sin".

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1 See Manu Ch. IX. 237. 2 Ch. XXVII. 7. 3 Ch. VIII. 130.
4 Âchâra 36. 5 Ch. VIII. 129. 6 Ch. XXVII. 5-9.

Likewise, by regard to the person also, an adjustment has been pointed out by the **Same Author** : "In the case of friends and the like, one should administer a verbal admonition; the expression 'Fie' for the devout; involved in disputes; one should punish other men with a monetary fine". By the expression' and the like', are included respectable people, as has been stated by the **Same Anthor** [1]: "The seniors, the family priests, persons entitled to respect, one should punish with a verbal admonition only; while other men involved in disputes, one may punish with a severe reproof, or with a fine".

As for what has been stated by **Saṅkha**, viz. "Not punishable are the mother and the father, a student, and the family priest, an ascetic, and a hermit, and also those who are endowed with (good) birth, actions, Vedic study, character, and conduct". As also by **Kâtyânana** viz., "Of the Âchârya, of the father, of the mother, and similarly also of the *bândhavas*, for an offence by these a punishment is certainly not ordained", that is intended as negativing a corporal punishment or a fine, and not of any penalty whatsoever ; as says **Manu** [2] : "A father, a teacher, a friend, a mother, a wife, a son, or the family priest, is not punishable by the King if they swerve from their own duty", as also **Bṛhaspati** : "The sacrificial priest, the family priest, the ministers, the sons, relations, and kindred, swerving from their duty should be punished, and should be banished if they commit treason against the King".

As for the text **Gautama** [3] : "He should be immuned by the King from six (kinds of punishment); he must not be killed, nor imprisoned, nor fined, nor exiled, nor shunned, nor censured", that has a reference [4] to "One who is well versed in the Vedas, is acquainted with the [5] world, the Vedas and (their) Aṅgas, who is skilled in disputations, in historical studies and the Purâṇas, who looks to these (alone), and lives according to these, who has been sanctified by the forty sacraments, who is devoutly engaged in the threefold performances, or in the six, and who is well trained in the duties (settled) under the agreement of local usage". Therefore, there is no contradiction with ancient texts.

Kâtyâyana also has stated an immunity from punishment : "When there is loss of life, and an offence has been committed, there shall be no

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1 Ch. XXVII. 7. 2 Ch. VIII. 135. 3 Ch. VIII. 12–13.

4 Gautama Dh. S. Ch. VIII. 4–11.

5 लोकविद् ; लोक *i. e.* the laws of the country and the like which may be learnt from the usage of the people.

punishment at all; this law has been proclaimed by Bhṛgu". **Nârada**, however, states a punishment by a half of the prescribed penalty: "After having committed an improper violent act, if a man feels repentance, or voluntarily confesses in a Court, for such a one half the penalty has been declared". **Vyâsa** also: "When oppressed by a disease, if any one repent and declares 'never shall this be repeated by me', for such a one he (*i.e.* the King) should declare half the panalty". In this respect **Gautama**[1] states an alternative course: "Or a pardon (may be given) under the collective opinion of persons versed in the Vedas". 'Pardon' *Anujñânam i.e.* after declaring a punishment, a discharge.

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Also the **Same Author**[2] says that a penalty may be imposed which may be more or less than the prescribed punishment, but which is sufficient to cause trouble to the criminal: "They declare that (the word) *daṇḍa* (chastisement) is derived from chastening (*damanât*); therefore he shall chasten who are unchastened". The meaning is, that so much punishment should be awarded by as much as there would be brought about a cessation of the particular trouble". So also **Manu**[3]: "After fully acquainting himself with the motive, the time, and the place, and after having considered the capacity (of the criminal), and the crime, one should cause punishment to be inflicted upon those who have incurred it". **Yâjñavalkya**[4] also: "Having ascertained the guilt, the place, and the time, as also the capacity, the age, the act, and the means also, a punishment should be devised for those who have incurred a penalty." There **Manu**[5] gives an illustration: "Where any ordinary man would be fined a *kârṣhâpaṇa*, there the King shall be fined one thousand, this is the settled rule". 'Ordinary' *i.e.* a poor man; "King" *i.e.* one endowed with affluence. **Kâtyâyana** also: "An offence for which a *S'ûdra* becomes amenable to punishment under the law, for the same (offence) a double, and further double, shall fall upon the Kṣhatriya and the Brâḥmaṇa (respectively). A *S'ûdra* who has receded from asceticism and who intently practices *japa* and *homa*, the King should punish that sinner with death, or should punish him with a double fine". **Bṛahaspati** also: "A man who has incurred a capital punishment should be compelled to pay a hundred *suvarṇas*; for an offence punishable with amputation of a limb, a half (of a hundred); if punishable with prongs, half of that. Beating, fettering, as also disfiguring: this, indeed, is the punishment for a slave, not the punishment of a fine; so says Bṛhaspati". **Nârada**[6] also: "Fines, beginning with a

1 Ch. XII. 52. 2 Ch. XI. 28. 3 Ch. VIII. 126.
4 Âchâra 368. 5 Ch. VIII. 336. 6 Appendix at p. 231.

kâkiṇi are declared to amount to no less than one *mâṣha*; those fines are called amounting to no less than a *mâṣha* which amount to one *kârṣhâpaṇa* at the most Fines beginning with no less than a *kârṣhâpaṇa*, are those amounting to no less than four *kârshâpaṇas*; or which begin with two, and end with eight, or begin with three and end with twelve; those, however, which are called *kârṣhâpaṇas*, all these are quadruppled." The meaning of the words *kâkiṇi* etc. have been pointed in the Chapter on Ordeals.

In this connection **Kâtyâyana**: "Whatever fine has been determined with effort for any offence, it should be understood to be in (terms of) the *paṇas*, and its equivalent to be paid to the King; where one-forth or half of a *mâṣha* has been prescribed, and where there is no particular mention, in such a case a *mâṣha* should be taken (as prescribed). Where a fine has been expressed in (terms of) *mâṣhas*, then it should be understood to be in silver; also where it is expressed in *kṛṣhṇalas*, the same fine should be determined as stated before".

The rules about their quantity, as also their technical terms have been pointed out by **Manu** [2]: "Two hundred and fifty *paṇas* are declared (to be) the first (or lower) amercement; five (hundred) should be known as the mean (middlemost), and one thousand as the highest." This technology is to be followed in the case of first offences. In the case, however, of a repetition of the offences, say **Yâjñayalkya** [3]: "One thousand and eighty *paṇas* is the highest amercement (*Uttama-Sâhasa*); half of it is the middle (*Madhyama Sâhasa*); half of that (again) is declared to be the lowest (*Adhama*)."

Therefore, whenever a fine is spoken of as the highest amercement or the like, at all such places, should be taken the *kârṣhâpaṇas* of that quantity or their equivalent in *niṣhkas* and the like.

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The penalty detailed in this manner is conducive of delight to all the people; so says the **Same Author** [4]: "When applied according to the Śâstras it gladdens the whole world, the Devas, the Âsuras, and men; but otherwise it produces wrath (through) the world". Also the **Same Author** [5] declares the censure for one who inflicts a penalty in disregard of the *Śâstra*, and also the praise for one (who acts) otherwise: "The unrighteous punishment, destroys the heaven, fame, and all the world; a proper punishment, however, procures for the King, heaven, glory and victory".

1 See also Nârada S. B. E. Vol. XXXIII. pp. 231-232, 57-60.
2 Ch. VIII. 138. 3 Âchâra 366. 4 Âchâra 356. 5 Âchâra 357.

While those who have incurred a punishment become purged of their sins by that penalty, so says **Nârada** [1]; "Those men who have received punishment from the Kings for offences committed by them, proceed to heaven free from sin, like virtuous men who had performed meritorious acts". **Kâtyâyana** also: "Purification is declared to be the remedy by those who know the principles of S'âstra; penance and punishment, with these, it is declared to be of two kinds".

Thus about Punishment.

Now **Retrial—Punarnyâyaḥ**

There **Nârada** [2]: "With women, at night, outside the town, in the innermost part of a house, with enemies, any transaction although completely entered into, will be subject to a reconsideration." The meaning is that any affair decided in regard to women, or with enemies, or in secret, is liable to be investigated again on account of a possibility of ignorance or partiality.

In the same manner any cause decided under duress, or under the influence of passion, hatred, or the like, should be upset, and a fresh investigation should be started. To that effect also **Yâjñavalkya** [3]: "Transactions brought about by force or fraud should be upset." The import is, that thereafter another transaction should be started.

So also, similarly should be done in the case of an incapacity of (one of) the transacting parties; so says the **Same Author** [4]: "A transaction entered into by a person (who is) intoxicated, or insane, or afflicated with disease, or by one in distress, or by a minor, or one frightened, or the like, will not be upheld, as also that entered into by one who has no connection."

By the expression *Âdi*, 'and the like', are included transactions directed by old men. Hence **Manu** [5]: "An agreement entered into by an intoxicated person, or one insane, or grievously disordered (in mind etc.), or one wholly dependant, or by an infant, or the aged, or such like others, as also by one who had no connection, is not valid." 'Who had no connection,' *i. e.* who was unconnected with the plaintiff or the defendant. **Nârada** [6] also: "That which is opposed to the interests of the town, or nation, as also that which is prohibited by the king, such a suit has been

1 Appendix 48. 2 Intr. I. 43.
3 Book II. 31. 4 Book II. 32. 5 Ch. VIII. 163.
6 See S. B. E. Vol XXXIII. quotations from Nârada p. 237 § 10.

declared by those who know the law to be inadmissible." **Hârita** also: "That which has been prohibited by the king, or which by itself is opposed to the interests of the citizens, or of the whole kingdom, or of the constituent citizens of the state; others also which are opposed to the interests of a town or village, or to the interests of the people [1] in general; all such suits are declared to be inadmissible." Thus the conclusion to be deduced is that a transaction of this character even though completed and established should be upset, and another should be entered into.

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Kâtyâyana [2] states the distinction between a completed (*Tirita*) and (that which is) established (*Anuśiṣhṭa*): "A cause which was alleged to be untrue, (but) has been declared by the members of the Court to be true is (known as) *Tirita*, Completed; while that similarly so declared from the statement of witnesses is (known as) *Anuśiṣhṭa*, Established." The meaning is that that which has been ascertained from the statements of witness is *Anuśiṣhṭa*.

As for what has been stated by **Manu** [3]: "Whenever and wherever a cause has been completed and executed also, one should regard that as (finally) established at law, and must not upset it," that should be regarded as a general rule merely, and having an application to those which have been acquiesced in or where there is no other cause for a revision.

Hence also **Bṛhaspati** [4] states an exception to it; "Even though a cause has been definitely decided by the *Kulas* or the like, but which does not create satisfaction, the king may set it on again, if after consideration, he finds it to be wrongly decided." The meaning is, that if a party considers a trial to have been concluded illegally, even though it was decided by authorized persons, then a retrial should be held.

In such a case, if it is proved that it was wrongly decided, **Nârada** [5] states a penalty for those who decided the former cause: "Where however, a cause has been (proved to have been) wrongly decided, the members of the Court shall be awarded a fine; for indeed, without punishment no one sticks to a proper path [6]." This,

1 महाजनविरोधकाः Dr. Jolly translates "opposed to the interest of eminent persons."

2 Cited by Nandana on Manu IX. 233. तीरित and अनुशिष्ट: Medhâtithi and Kullûka interprets these as cases properly decided by the King's Courts; while Sarvajña Nârâyaṇa puts it as 'orders passed by the former kings'. Nandana cites Kâtyâyana and also follows it. See also Asahâya on Nârada Intr. I. 65 (p. 22 S. & E. Vol. XXXIII.)

3 Ch. IX. 233. 4 Ch. VI. 5. 5 Intr. I. 66.

6 न हि जातु विना दण्डात्काश्चिन्मार्गोऽवतिष्ठते। Dr. Jolly translates "Because nobody certainly can act as a judge without incurring the risk of being punished (eventually)."

penalty for the members of the Court only, should be understood to be where the successful party had not been instrumental in the (making of the) decision ; if he was instrumental, then in that case a penalty should be for him also. So also **Bṛhaspati** : [1] "After having considered the matter in common with many Brâḥmaṇas well versed in the Śâstra, he should punish along with the successful party, the members of the court who had been found (to be) guilty." The infliction of a penalty along with the successful party will be only in the manner stated in the chapter on the penalty for the members of the Court ; so says **Yâjñavalkya** : [2] "Having, however, decided again those causes which were wrongly decided, the members of the Court along with the (then) successful party, should be fined double the amount in dispute." 'Wrongly decided', i. e. owing to the fault of the members of the Court along with the successful party.

Where, however, the wrong decision was owing to the fault of the witnesses, then the witnesses only should be punished in accordance with the rules stated in the chapter on the punishment for witnesses ; not the successful party, nor even the members of the Court ; but when, moreover, through the fault of the successful party and the witnesses, then these only should be punished, and not the members of the Court ; this is the import.

In this manner a retrial on account only of dissatisfaction should be ordered when the decision under consideration is (only) a semblance [3] of justice. When the decision was properly given, then says **Nârada** : [4] "If a man is of opinion that the suit had been decided and execution ordered in a way contrary to justice, he may have the cause tried once more, provided he should pay twice the amount as a fine." 'Contrary to justice' i. e. decided in contradiction of the principles of law and justice ; meaning that the party audaciously thinks so, although it was properly decided.

Here, by reason of the improbability of a cause being decided wrongly, another decision in the fresh trial also should have a fine undertaken by the party defeated in the former suit ; so says **Yâjñavalkya** : [5] "He who thinks that he was not defeated even though he was defeated in due course of law, if such a person is defeated again, when coming up again and should be made to pay a double (amount as) fine." In this manner a rehearing is

1 Ch. VI. 6. 2 Book II. 305.

3 न्यायाभासत्वे सति. न्याय आभास a semblance, 'an illusory appearance of justice'.

4 Intr. I. 65. 5 Book II. 306.

coupled with a fine, the authority being in the king alone in a Court consisting of the King.

In a court without the King, however, the rehearing should be done without a penalty, the laying of a penalty having to be done by the king alone, the second Court must be higher than the first court.

The relative superiority of the members of the Court as deciding authorities has been pointed out in the Chapter [1] on the 'Deciding authorities'. If, however, a doubt is raised that a decision in a King's Court was wrongly decided, the rehearing of it shall be in another Court with a superior king. So also **Another Smṛti** : " What has been decided by a king against the principles of law, through ignorance, that also being unjustly decided, should be submitted again for a decision."

As for what has been stated by **Pitâmaha** : " When a cause has been decided by (the members of a) village, one should go to the town ; for a cause decided by a Court, however, to the King ; when decided by the King, even if wrongly decided, there is no re-opening of it," that has a reference where a court of a jurisdiction superior to the first court is not available.

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Where, however, a party has been defeated by his own statement, there cannot be a rehearing even if a superior Court is available ; so says **Nârada** [2] : 'Of those who have lost their cause on account of witnesses or members of the Court, and it is attacked (as faulty), there may be a fresh trial; for those however, who have been defeated by their own statements, the procedure of a new trial has not been stated." The meaning is that those who have been defeated owing to the statements of witnesses, or on account of the action of the members of the Court themselves, a retrial of the cause may take place when the first decision is attacked. The use of the word 'members of the Court' is inclusive (by implication) also of the ministers and the like. Hence also **Manu** : [3] " Whether it be a Minister, or the Chief Judge, whoever decides a cause wrongly, that the King should try himself, and also fine him a thousand."

Thus (ends) the (Chapter on) **Re-hearing.**

Now the Rescission of transactions—Kṛtanivartanam.

There **Manu** [4] : "A fraudulent mortgage or sale, a fraudulent gift or acceptance, and (any other transaction) where he detects fraud, all that,

1 See p. 22 above. 2 Intr II. 40. 3 Ch. IX. 234. 4 Ch. VIII. 165.

one should rescind". Yoga, 'acquisition' *i. e.* contact with another's property, by taking it into one's possession as a friendly loan, even though without a desire to acquire it as one's own; *Âdhamanam*, 'mortgaging', *i.e.* creating a charge; by means of possession creating a charge. In this manner should the (compound word) 'fraudulent sale' be dissolved. **Yama** also: "Whatever had been donated under duress, or held in possession by force, as also caused to be put down in writing, all transactions brought about by force must indeed be upset, so said Manu". **Kâtyâyana** also: "By an intoxicated person, or by a lunatic, or under a different intention, whatever had been donated, or transacted, that can never be (regarded as) reliable". **Nârada** [1] also: "Whatever a minor transacts, as also one who is not independent, those men who are well versed in *S'âstra* declare that as not done in (the eye of the) law".

The minor, and a person not independent, have also been explained by the **Same Author** [2]: "Like those in the womb [3], may be regarded a child until the eighth year; a minor, until (he has attained) the sixteenth year, and he is then also called *Poganda*. After that (period), he is (regarded as) capable of understanding the transactions and as independent, if there be no father."

By this it comes to have been stated as of course, that one who has a father (living) is not independent. It has been so stated by **Saṅkha** and **Likhita**: "Not independent are those whose father is living." The use of the word father is intended to indicate the mother also. Hence also **Nârada**: [4] "While they are living, he can never be (regarded as) independent, though he may have reached a mature old age." 'While they are living' i. e. the mother and the father. "Of the two (parents) even, the father has greater authority, because the seed has been declared to have pre-eminence; in the absence of the owner of the seed, the mother; while in her absence, the eldest born," thus having been stated by the **Same Author** [5] immediately after.

By this it comes to be stated that one who has an elder (brother) is also not independent. The **Same Author** [6] says that it is not that only he is

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1 Ch. I. 39. 2 Ch. I. 35–36

3 गर्भस्थसदृश With this may be compared the rule of Roman Law, under which when the child was a mere baby, and could not speak or understand the forms he was *infanti proximus*. After eight he was considered to have *intellectus*, and was *pubertate proximus*, but not as having attained *judicium* i. e. capacity to decide. See also Asahâya on this verse.

4 Ch. I. 36. 5 Ch. I. 37. 6 Ch. I. 38.

not independent who has a father, or a mother or an elder (but also) "Not independent are women, sons, slaves, and the followers." 'The followers' i. e. (those who are) dependent (upon him) for their maintenance.

Hârîta says that in (regard to) particular transactions women have no independence: "In regard to a donation, or in regard to money, and in regard to a religious charity in particular, whether for acceptance or alienation, never shall a woman have independence." **Nârada**[1] states others who are not independent: "All the subjects (people) are not independent, the ruler of the land is independent; not independent has been declared a pupil, while independence exists in the preceptor."

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Here, the discussion about independent persons is with a view to point out that a transaction entered into by one not independent is to be upset by him (i. e. the independent person) only; hence also **Kâtyâyana**: "A transaction entered into by one who is not independent, his master should get rescinded; the other party must not quarrel with the[2] master, except in transactions entered into by the affrighted, or the intoxicated". The import is, that as the king alone has jurisdiction in regard to transactions entered into by the affrighted, or the intoxicated, a dispute started by the other party against the master of the affrighted or the intoxicated who has upset it, is not absolutely improper.

Nârada[3] however states an exception, at times, to the upsetting of a transaction entered into by one who is not independent: "These transactions themselves are valid if the master ratified, or a son in the absence of the husband, or the wife in the absence of the husband or the son. In the same way, a transaction entered into by a slave is declared not to be valid, excepting under the master's sanction; a slave is not master of himself. Also a transaction entered into by a son if it has been without the father's desire, that also is declared invalid; a slave, a son also, these two are equal". The meaning is that the rescision of a transaction entered into by a person who is not independent may be made in a case where there is an absence of the consent of those who are independent.

Kâtyâyana also: "Never do the gift, mortgage, or sale of fields, houses, or slaves made by those who are not independent attain validity if they are not approved of". If, however, approved, they attain validity; so says the **same author**: "All these are certainly competent for the sale

1 Ch. I. 33.

2 on page 131, l. 4 for मर्ता read भर्त्रा.

3 Ch. I. 27, 29, 30.

and purchase of articles of merchandise, if indeed they make these transactions with consent". In the same way, in regard to the sale etc. of land etc., brothers etc. appointed by an independent person, although themselvs not independent, may have authority ; so says the **same Author**: "In the same way are a brother, a brother's son, or a son, in regard to transactions about land etc. if they are permitted by a senior (member) going (abroad)". Permitted i. e. appointed.

To that effect also **Bṛhaspati** : [2] "One appointed by his master to look after the income, expenditure, and preservation of his property, and after the loans, village, and trade, is called an appointed manager. Whatever has been transacted by him is valid whether relating to receipts, non-receipt, expenses or income, and whether it may have been transacted at home or abroad. The master must not annul such transactions as these". **Kâtyâyana** also says that the master must not rescind a transaction entered into by an appointed agent : "One, however, who has been appointed to a business, in that matter he is indeed the master ; his master cannot falsify anything made by him".

Similarly, even in the absence of consent or appointment, anything done by one not independed for the purpose of the family maintenance, the one (who is) independent must not falsify ; so says **Manu** [3] : "Should even a person wholly dependent make a contract for the dehoof of the family, the master of the house, whether in his own country or abroad, must not rescind it".

The same rule should be observed (in regard to acts) for removing adversity; so also **Nârada** [4] : "The sages declare that the transactions entered into by women are invalid, except in adversity". The use of the word 'woman' is indicatiwe, by implication, of those who are not independent. Thus, moreover, the implied meaning is to be deduced that in (times of) adversity, even the transactions of those who are not independent are valid.

In this connection, the **Same Author**, states by way of pointing out an exception : "Especially the gift, hypothecation or sale
PAGE 132* of a house or field." The meaning is that the gift, mortgage, or sale of a house or land if made by one not independent are not (regarded as) valid. So has been explained in the commentary on it.

1 जाया Dr. Jolly, it appears reads राजा.

2 . Ch. VI. 7-8. 3 Ch. VIII. 167. 4 Ch. I. 26.

Likewise, even by one who is independent, but who is like a dependent, a transaction made does not become valid ; so says **Nârada** :[1] "That also which an independent person does, who has lost control over his actions, is declared an invalid transaction, on account of his want of independence."

The independents also have been described by the **Same Author** :[2] " Three persons are independent in this world ; a king, the Âchârya, and among all the *varṇas*, a householder in his own house when in this normal condition ; (real)[3] independence, however, belongs to the eldest ; the (right of) seniority is made up of both capacity and age."

By saying 'a householder' (masculine) *gṛhi*, the Author points out that there is no independence for the lady of 'the house' (*gṛhiṇî*). Therefore, although an absence[4] of independence has been stated to be for one who has a mother, still (from that) no independence for the mother should be inferred. Therefore also the validity of a transaction entered into by a husbandless woman, has been stated to be (established) only by the consent of the sons or others.

The meaning of the expression *Prakṛtim gata* 'in his normal condition,' has been expounded by the **Same Author** :[5] "Those are declared to have lost control over their actions (*aprakṛtiṅgatâḥ*) who are actuated by love or anger, or tormented (by an illness), or oppressed by fear or misfortune, or biassed by friendship or hatred."

A transaction such as the sale of a son or the like is not regarded as valid even though made by an independent person in possession of his normal faculties ; as in that respect he has no independence ; so says **Kâtyâyana** : " The subjection of the son, or of the son and the wife, is only in regard to the right (of the father or husband) to command, but in regard to sale as well as a gift also, there is no (power of) control of the father over the son." Therefore, the import is that a transaction such as the sale of a son or the like, even though made by one who is independent and in possession of his normal faculty, should be rescinded. This has a reference to one who has (only) one son ; this (subject) we will discuss in the Title 'Non-delivery of what was given.'

Therefore in regard to transactions of sale or the like, although made several times, or made by one, or made in regard to one object, as also in

1 Ch. I. 40. 2 Ch. I. 32. 3 Ch I. 31. (2).

4 on page 132 l. 7 for मातृमतो स्वतंत्रोक्ता read मातृमतोऽस्वतंत्र etc.

5. Ch. I. 41.

regard to a re-sale also, a re-sale, or the like, by reason of the absence of the power to control does not (finally) hold good ; so says **Yâjñavalkya** :[1] "In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates. In the case of a pledge, a gift, and a sale, however, evidence in support of the prior transaction preponderates." Therefore, the import is that a transaction of a later date and the like should be upset.

Thus ends the **chapter on Rescission of Transactions.**

Now some **tex**'s *regarding the* **prope.ty of Minors** *and others.*—**Bâladhanaviṣhayâṇi.**

There **Manu** :[2] "The king shall protect the inherited (and other) property of a minor, until he has returned[3] home (from his teacher's house), or until he has passed (the age of) minority." 'Property of a minor,' i. e. of the minor's ownership ; 'inherited property,' i. e., any property : This has a reference to where there is no relative in existence. That the use of the word 'Minor,' is intended to indicate (any) one who is not competent to protect his own property, the **Same Author**[4] proceeds to state clearly : "In like manner care should be taken of (the property of) barren women, of a sonless woman, of those whose family has become extinct, of wives and widows faithful to their lords, and of women afflicted with disease." 'Barren,' *i. e.* sterile ; 'sonless women,' *i. e.* whose sons are not living ; 'whose family has become extinct,' *i. e.* who have no one on their side.

The **Same Author** states the penalty for those who deprive barren women and like others of their property : "While[5] these are living, if any of their relatives appropriate their property, a righteous king must punish these like thieves."

Of one also who although he is competent to protect his property, still owing to want of knowledge of its location or similar cause, his property has been discovered by another and reported to the king, the same should be announced to the people's assembly and kept

PAGE 133* under the protection of the king ; so says **Gautama**[6] : "After having found lost property whose owner is not

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1 Book II. 23. 2 Ch. VIII. 27.

3 समावर्तन is the ceremony performed when the celibate student returns home after completing his course of studies at the Âśrama of the Âchârya.

4 Ch. VIII. 28. 5 Ch. VIII. 29. 6 Dh. S. Ch. X. 35. 37.

(known), they (the finders) should announce it to the king (36). The king shall cause it to be proclaimed, and it shall be guarded (by him) for a year."

As to what has been said by **Manu** [1]: "Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years," that has a reference to an owner who is probably in a far distant country.

The deposit, moreover, should be made by the king without an intention of mixing it with his own property. To that effect (says) also the **Same Author**: [2] "Lost property found, when its owner is not known, shall remain with specially appointed officers; if any one takes it, the king shall cause these to be slain by an elephant as thieves." Property which has been lost to the owner, and which has been found by another *is (called)* '*lost property.*' '*By an elephant*' *i. e. by a trunked elephant.*

Yâjñavalkya [3] states the rule about property lost to the owner and found (by another): "Lost property when (subsequently) recovered should be given by the king to the owner." The owner also should establish his ownership and (then) take it. So says **Manu**: [4] "He who says, 'This belongs to me,' must be examined according the rules; if he accurately describes the shape, and the number etc., he (proves himself) as the owner, (and) is entitled to (receive) that property." The meaning is that the person who says 'it is mine,' such a one when questioned by the king's officers as to at what place, at what time, of what colour, how deposited, of what number, of what measure was it lost, gives replies as to the same kind of deposit, and the like other details, he may take away that property. On a discrepancy, however, he will not be proved to be the owner, and will not be entitled; this is the import.

On the other hand, for his attempting to wrongfully obtain the possession of another's property, he shall be liable to a punishment, so says the **Same Author**: [5] "But if he does not really know the time and the place where it was lost, its colour, shape, and size, he deserves to be punished with a fine equal (in value) to it." Not knowing [6] the facts, and (therefore making inconsistent statements; 'equal to it,' *i. e.* equal to the lost property.

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1 Ch. VIII. 30. 2 Ch. VIII. 32. 3 Book II. 33.

4 Ch. VIII. 31. 5 Ch. VIII. 32.

6 Here there is a mistake in the print; for तत्त्वतो वेदयाना read तत्त्वतोऽवेदयाना.

Even one who gives consistent replies, everyone must take the lost property and recovered before (the expiry of) one year only. So says **Yâjñavalkya**: [1] "A thing which was lost or stolen, and which was recovered by the custom officers or by the local watchman, the owner may take away within one year; (and) after it, the king." In regard to an owner, however, who is at a far distant place, **Manu** [2] says: "Within the period of three years the owner may take it away; after that, the king may take."

Indeed, this statement that 'the king may take' is contradictory to the rule prohibiting the appropriation of another's property. (The answer is) yes; and therefore it is, that the meaning of this should be understood to be that from a separate place, where it was deposited, the king should take it to his own place. Therefore, moreover, even if the owner turns up after the time limit has expired, lost property recovered should certainly be given to the owner, if it has been duly established (to be his) by regard to its form, number etc.

AN OBJECTION

THE ANSWER

But on the other hand, the king should recover some money from him for the fault of transgressing the limit. To that effect also the **Same Author**: [3] "Now, the king may take one sixth part from the property lost and recovered, or a tenth, or a twelfth, bearing in mind the rule of good men." By the word 'now,' *atha*, is expressed the interval of time of the appearance of the owner after the lapse of the prescribed limit. The rule of adjustment to be understood should be that, if the delay be far too much, a sixth part, but if not far too much, the tenth part, and in the absence of any delay, a twelfth part should be taken.

As to what has been stated by **Gautama**: [4] "Afterwards to the finder, one-fourth, to the king the remainder," that rule should be observed in the case of an owner who has transgressed the limit, and where it has been determined that he has perished. If, however, the owner be living, then it is clear from this very text that the fourth part of the king's portion goes to the finder.

As to what has been stated by **Yâjñavalkya**: [5] "In the case of a beast with a single hoof, (the owner) should pay four *paṇas*, five for men, and two each for a buffalo, a camel, or a cow, and a fourth each for a goat or a sheep," that has been stated by some commentators as a special rule in

1 Book II. 173. 2 Ch. VIII. 30. 3 Ch. VIII. 33.
4 Ch. IX. 38. 5 Book II. 174.

regard to animals with a single hoof and the like, and in modification of the rule stated by **Manu** regarding the recovering of a sixth share or the like. By others, however, it has been stated to be by way of laying down a rule of payment to the finder in the case of single-hoofed animals and the like.

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In regard to a treasure-trove lost and recovered, **Manu** [1] states a special rule: "From that man who shall truly say with respect to a treasure-trove, 'this belongs to me,' the king may take one-sixth, or a one-twelfth part, but if he falsely says so, he shall be fined in one-eighth of the property." The meaning is (when he says) 'it is mine, since it had been deposited by me or my ancestors,' this he should establish by facts as true, such as by means of the evidence consistent with its form, number etc.

Here, the rule of adjustment should be understood to be that when the owner is devoid of any qualifications, he should take a one-sixth, but when he is duly qualified, one twelfth; likewise, when, however, the owner of the treasure is a learned Brâḥmaṇa, nothing whatever should be given to the king; so says the **Same Author**: [2] "When, however, a learned Brâḥmaṇa finds a treasure deposited before, he may even take it in entirety; for, indeed, he is the master of the whole." 'Deposited before,' *i. e.* deposited by his father or the like.

The use of the word 'learned' is indicative of the six [3] (kinds of) privileges also. Hence also **Vasiṣhṭha** [4] "If a Brâḥmaṇa finds it, (then, if he be observing the six-fold duties, he may take the whole". 'Six-fold duties' *i. e.* offering a sacrifice etc.

As to what, moreover, has been stated by **Manu** [5]: "The King obtains one half of ancient hoards and metals (found) in the ground, by reason of (his giving) protection, (and) indeed (because) he is the lord of the soil", that has a reference to the treasure found by a Brâḥmaṇa of the aforestated qualifications, where no memory of the owner is available, since the word 'ancient' has been used.

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1 Ch. VIII. 35-36.

2 Ch. VIII. 37.

3 The षट्कर्मs are अध्ययन, अध्यापन, यजन, याजन, दान and प्रतिग्रह.

4 Dh. S. Ch. III. 13.

5 Ch. VIII. 39.

As for what has been stated by **Vasiṣṭha** [1] : "When one happens to find a treasure, (the owner of which is) not known, the King should take that, after giving a sixth part to the finder", that has a reference to a finder devoid of the aforestated qualifications. Hence also **Yâjñavalkya** [2] : "If a treasuretrove is found by any other, the King should take a sixth part : if, however, the informarion is not given (by the finder), and he is found out, the finder should be made to pay a fine". The meaning of the first half is that the King should take a one-sixth part from a finder of a treasure who is other than a Brâḥmaṇa duly qualified by learning and by the performance of the six-fold duties ; the meaning of the latter [3] half is that from the man who attempted to cheat in regard to the found treasure the entire treasure should be taken, and a fine also according in his capacity.

Manu [4] states a rule when the King himself is the finder : "When the King finds a treasure of gold cancealed in the ground, let him give one half to Brâhmaṇas, and place the other half in his treasury." If, however, the treasure be his own, "he should place it in its entirety in his treasury" since **Gautama** [5] has stated : "A treasure-trove is the King's property."

As regards property taken away by robbers, (a rule) has been stated by the **Same Author** [6] himself : "Having recovered property stolen by the thieves, he shall return it to the owner, or he should pay (its value) out of his treasury". When he is unable to comply with the first alternative, (then) is the second alternative. As says **Vyâsa** : "When, however, a King is unable to restore property taken away by robbers, that, indeed, should be paid from his own treasury by a King who is unable (to restore.)"

Thus the **texts relating to the property of minors and the like.**

After having reached the beautiful crescent light of Deva sprung from Keśava the Sun, the peaceful leader of the twice-born, may the people (be able to) to do all the proceedings at law in peace.

Thus is concluded the First Part in the **Vyavahâra** Kâṇḍa of the **Smṛtichandrikâ'** composed by Yâjñika **Devaṇṇabhaṭṭa** the Somayâji ; the son of **Keśavâditya Bhaṭṭopâdhyâya**, the accomplished scholar in all lores.

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1 Dh. S. Ch. III. 13. 2 Book II. 35.

3 The Mitâkṣharâ has interpreted it differently. See p. 758, ll. 13-18.

4 Ch. VIII. 38. 5 Dh. S. Ch. X. 43. 6 Dh. S. Ch. X. 46-47.

In this part the following is the **list of contents** in successive order : (1) Consideration of the nature of Vyavahâra (2) Consideration of the eighteen titles. (3) Divisions of Vyavahâra. (4) Determination of the deciding authority. (5) The law Court (6) The law regarding Trials (7) Law of Arrest (8) Commencement of the proceedings at Law (9) The Plaint, the Answer, and the subject under dispute (10) The Part relating to the burden of proof, evidence, documents. (11) Test of documents. (12) Discussion of the law of possession. (13) Characteristics of witnesses (14) Kinds of witnesses. (15) Persons incompetent to be witnesses, and their varieties. (16) The exhibition of witnesses. (17) Testing of Witnesses. (18) The law regarding the charging of witnesses. (19) The rule regarding the questioning of witnesses. (20) The examination of witnesses. (21) Rule regarding the deposition of Witnesses. (22) Texts relating to witnesses (23) Where witnesses are not necessary. (24) Consideration about ordeals (25) Texts bearing on petty and serious charges (26) Adjustment of ordeals by regard to the amount (27) Ordeals by regard to the Caste of the disputants. (28) Ordeals according to the seasons (29) Places for ordeals (30) Preparation of the balance (31) Law common to all the ordeals (32) Putting up the balance. (33) Procedure regarding fire. (34) Rule about Kośa (35) Rule about rice. (36) About Heated *mâṣha* (37) About the ploughshare (38) About Dharma (39) Procedure about the decision &c. (40) About punishment (41) Retrial. (42) Review (43) About the property of minors.

Thus in the **Smṛtichandrikâ** in the **Vyavahârakâṇḍa** in its **First Part, the list of Contents** in order, is finshed.

GENERAL-INDEX

TO THE

AUTHORS &c.

Arranged According to Sanskṛt Alphabets

Maxims

Important Words